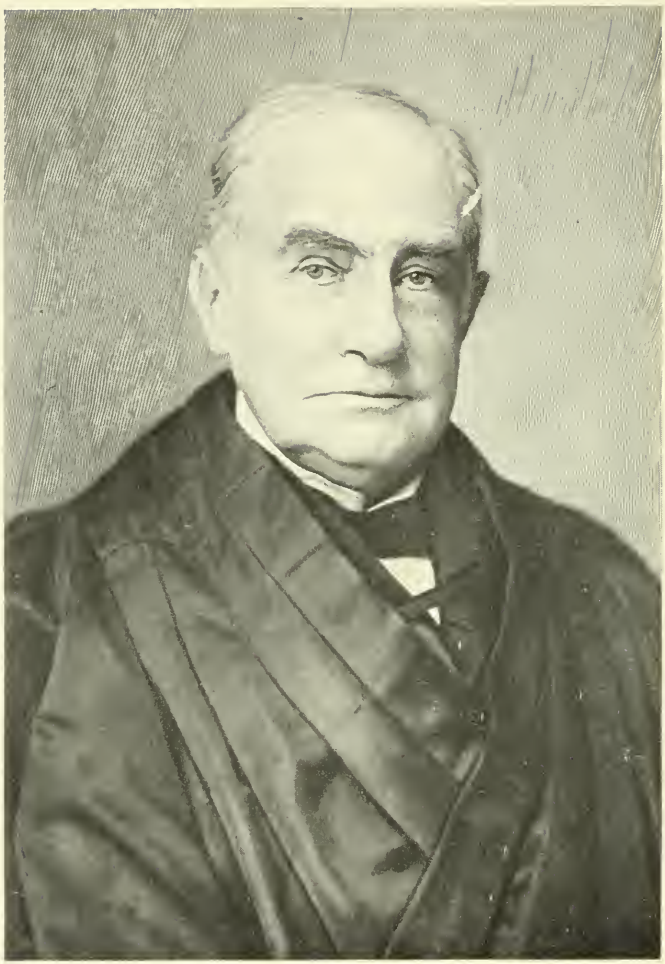

HENRY BILLINGS BROWN

ASSOCIATE JUSTICE, SUPREME COURT OF THE UNITED STATES

1890—1906

MEMOIR OF

HENRY BILLINGS BROWN

Late Justice of the Supreme Court of the United States

CONSISTING OF AN AUTOBIOGRAPHICAL SKETCH
WITH ADDITIONS TO HIS LIFE

BY

CHARLES A. KENT

OF THE DETROIT BAR

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PREFACE

November 1, 1859, I entered the law office of Walker & Russell, of Detroit, Michigan, as a student of law.

The next month another student, Henry Billings Brown, came into the same office.

The friendship then begun continued without interruption until his death, and the intimacy, though sometimes greater or less, according as we met, was without a break. I did what I could to aid in securing his judicial appointments. While he was District Judge, I argued several cases before him, though the bulk of my practice was in the State courts; after he went to Washington, I saw him several times, and conversed with him freely on almost every topic. I have preserved many letters from him, mainly those written after his retirement. I had few cases before the Supreme Court while Justice Brown was on the bench. His reputation as Judge depends mainly on his published opinions. What is thought of him as District Judge, I know from talk with other lawyers practising in that court and from my personal knowledge. I

have been especially aided in judging of him in admiralty matters by an able letter from George L. Canfield, an admiralty lawyer. I have a letter from his college classmate, Hon. Chauncey Depew, New York Senator for two terms, about his college days and subsequent life as Supreme Justice. I have also a letter from Justice W. R. Day, now of the United States Supreme Court, concerning Justice Brown's career on that bench.

From 1855, when in college, to 1875, when Mr. Brown became District Judge, he kept yearly diaries which I have, in which almost every day he made a memorandum of any incident of special interest. In many of these diaries, he made, at the end of a year, a review of it, so far as events impressed him. In these diaries Mr. Brown kept an account of his expenses. During the last years of his life, in Washington, he kept expense books, which I have. I have not found his accounts as a lawyer when in practice. I have various other memoranda, which he made after he went to Washington, concerning the books he read and intended to read, about his health, the friends he saw, his journeys, etc.

I have had some experience in writing biographical sketches of eminent lawyers, after their death, and have found it paid to collect the facts of their earlier lives.

Many years ago I stated this experience to Justice Brown and suggested that he leave a memorandum of such facts, as to his own life. Perhaps in consequence he made the autobiographical sketch herein published, and left word to have me add to it as I thought best, but adding that he did not want a long biography.

In my work I have received every assistance from Justice Brown's relatives and especially from his widow, and sister-in-law, Mrs. Daniel Goodwin. Still, for what is written I am alone responsible. It is hardly possible that a life so uniform and so free from striking incidents can be made interesting to the general public. At the most, I can hope that what I write may be read by Justice Brown's friends and members of the bar, who may wish to know the steps by which one of their number attained and honoured the distinguished positions of United States District and Supreme Court Judge. I desire to present my subject exactly as he was, with his deficiencies as well as his virtues, or rather, I wish to have him present himself, as he does in his diaries and letters. In these Justice Brown gave his opinions with the utmost freedom as to persons as well as things. Herein lies the interest in these diaries and letters. I have hesitated how far to quote what he has written when it is not commendatory, but I have thought best in general to give what he says

of public men and public events. His opinions are sometimes hasty and may be unjust, but they reveal him with great distinctness. There was absolute sincerity in all he wrote and said. As Justice Brown's autobiography touches on almost all periods of his life, I see no way but to add such facts as appear interesting, or instructive, and then give such judgment of him as a man and a judge as appears just.

C. A. K.

MEMOIR OF
HENRY BILLINGS BROWN

MEMORANDA FOR BIOGRAPHICAL SKETCH

I was born of a New England Puritan family in which there has been no admixture of alien blood for two hundred and fifty years. Though Puritans, my ancestors were neither bigoted nor intolerant — upon the contrary some were unusually liberal.

The earliest known member of the family, Edward Brown, emigrated to New England soon after the landing of the Pilgrims, settled in Ipswich, Essex County, Massachusetts, and owned a tract of land there as early as 1640. His grandson, John Brown, in the later years of the seventeenth century moved to the North Society of Preston, Connecticut, now known as Griswold, where some of his descendants have since resided.

My maternal ancestor, most remote, Job Tyler, settled in Andover, not far from Ipswich, and from him are descended a large family of that name who are scattered through New England. His grandson, Hope-

still Tyler, also moved to Preston, Connecticut, in 1704. The reason assigned for his removal was the trial of his wife and daughters for witchcraft. Although they were acquitted, they became disgusted with the ecclesiastical rule in Massachusetts, and joined a somewhat general movement to more congenial surroundings in Connecticut. Hopestill left a large family of children, from whom are descended Gen. John Tyler and his nephew, Lieut.-Col. Samuel Tyler, my great grandfather, of Revolutionary repute, Prof. Moses Coit Tyler, of Cornell University, and Mrs. Roosevelt, wife of the President.

The Browns and Tylers were connected by neighbourhood, political and religious sympathies, and by intermarriage. Lieut.-Col. Samuel Tyler married my father's aunt, Judith Brown, and their granddaughter subsequently married my father, Billings Brown, who after a time removed to South Lee, Massachusetts, where I was born March 2, 1836. My father, though not an educated, was a most intelligent man, and a great reader of history and biography, with occasional incursions into the domain of poetry and romance. Like many of his generation he was a great admirer of Burns. My mother was a woman of great strength of character and pronounced religious convictions. For a country girl, she had been well educated in the con-

ventional accomplishments of the day, and was quite an adept at painting and drawing. She was fond of literature, read good books and wrote with much facility. She was strict in the performance of her religious duties, insistent upon her sons' attendance upon church, and was, in short, a typical Puritan mother.

Keeping a diary as she did during the early years of my life, she remarks on the second anniversary of my birth (March 2, 1838): "Henry knows all the letters in the alphabet, large and small. He has not learned them by rote, but the capitals mostly from newspapers by spreading them upon the floor and pointing to the letters and looking to us for the names; for when he commenced, which was in January, he could speak but few of them, he now sounds all, though some in a broken manner. The small letters he learned by their being pasted upon a thin, white cloth promiscuously; these he has learned in less time than the capitals, and what is singular has no tendency to the common perplexity in distinguishing the little 'b' from 'd' or 'p' from 'q.' Books are his source of amusement."

Upon the fifth anniversary she says: "He has made good proficiency the past year for his advantages. He has not been to school and has nothing to stimulate him but his inclinations. We find it necessary to divert his

mind from his books on account of his eyes failing him. I have thoughtlessly indulged him in reading evenings the winter past, but seldom as long as he wished, yet I now see my error and lament it exceedingly." An inflammation of the eyelids, thus produced, has pursued me through life, resulting in the complete loss of the sight of one eye, the partial loss of the other, and a threat of total blindness constantly hovering over me.

South Lee was a small manufacturing village, and among my earliest recollections is that of sitting in a forge, watching the sparks fly from the trip hammer and marvelling why water was used to stimulate instead of extinguishing fires. I was also fond of watching the various processes in the manufacture of paper, which was largely carried on in the village. I had a natural fondness for machinery and was never so happy as when allowed to "assist" at the sawing of logs and shingles and the grinding of grain in my father's mills. Indeed it is not at all improbable that I should have succeeded him in his business, had he not decided in 1845 to sell his entire plant and move to Stockbridge — the adjoining town. Up to this time I had attended only a district common school in which, however, I was not too young to overlook the fact that I was rather popular with my teachers, since when the "ruler" was

passed along for a general application, I was given the fewest and lightest strokes of any member of the class. But when I went home I used to think that my father took a grim satisfaction in atoning for any delinquencies of the schoolmaster in this particular, and thus restoring the equilibrium. But I was naturally obedient, and when my father said to me one day, "My boy, I want you to become a lawyer," I felt that my fate was settled, and had no more idea of questioning it than I should have had in impeaching a decree of Divine Providence. It certainly was not a bad idea in my case, as it settled the doubts which boys usually have regarding their future. It also had an important effect in directing my studies. In the same conversation, speaking of a certain man, said to be rich, I asked him how much a man must be worth to be rich. He said that much depended upon the locality and surroundings, but that in the country portions of New England he had always considered a man to be rich who was worth $20,000. This was certainly a modest estimate, but when we consider that this amount invested at the then current rate of six per cent. yielded an income of $1200, and that not one man in a hundred then spent more than $1000 per year for his family expenses, it will be seen that my father spoke well within the truth, al-

though in the sixty-five years that have since elapsed, a man in the Berkshire Hills with an *income* of $20,000 is not considered to be very rich.

Upon our removal to Stockbridge in 1845, I was entered as a scholar at the Academy and began the study of Latin, which I have always thought and still think, should be the foundation of the intellectual equipment of every educated man. I soon discovered that my strength, as well as my inclination, lay in the direction of languages rather than of mathematics. The school was an excellent one, and I was quick to perceive that the pupils were of a class much superior to the factory children I had met in the District School at South Lee. Stockbridge was then as now one of the most beautiful of New England villages, and the centre of much literary and civic activity. Its leading families — the Sedgwicks, the Dwights, the Fields, and the Goodriches — were among the first in the Commonwealth, and many of their younger members have since risen to high rank in the National Judiciary and Politics. While the village had lost the little commercial importance it had possessed in the earlier years of the century, even yet evident in a row of dilapidated shops and a newspaper office, it had fully replaced them by beautiful houses, stately rows of elms, and wide, well kept streets. It was then considered the gem of the Berkshire Hills, al-

though within the past fifty years other villages, notably Lenox, have risen to a position, where they may justly claim to be candidates for the same title.

The only drawback to the pleasure of living in the Berkshire Hills is, the winter's snow begins to fall in November, and sleighing sometimes continues as late as April. For three months in the year the roads, and sometimes the fences are invisible, and occasionally the houses and outbuildings are buried beneath drifts of snow. We occupied a house in the centre of the village, subsequently tenanted by Mr. Choate, and I saw nothing to indicate that we were not to treat Stockbridge as a permanent home, until the word was passed around that we were to return to Connecticut. Whether this was due to the harshness of the climate or to a restlessness more natural to a Western pioneer than a New England country gentleman, which always characterised my father's actions, I never knew; but it was suddenly announced that he had bought a new home in the little village of Ellington, Tolland County, Connecticut, to which we removed in the spring of 1849.

Ellington was a pleasant and rather picturesque village, upon the edge of the Connecticut River Valley. Its streets were wide, and through the enterprise and foresight of one of its earlier citizens, had been planted with rows of graceful elms. It had the usual equip-

ment of a country village — a church, a tavern, and post-office, a "store," a "squire," a doctor, and a dentist — and was not altogether free from the rival factions so common in such communities, where each side "spake fair" to the other, but with somewhat of a rancour and bitterness in their hearts. A daily stage was the sole means of communication with the outer world, and its arrival was always looked for with interest by a group of eager bystanders. Life was peaceful, but not exciting. As there were no manufactories, there was no smoke; as automobiles had not been invented, there was little dust, and never a foul smell; and as there was no commerce, there was not the rumbling of carts and heavy wagons. The principal amusements were an annual donation party, a decennial "revival," a winter sleigh ride, and an occasional "small and early" evening party. No disturbance was ever heard in its streets and the travelling circuses thought it beneath their notice. A photograph car stopped there once in a great while, but never to remain more than a few days. In short, if one could "put away" all ambition and be content with the simplest of lives, Ellington was an ideal residence. Notwithstanding its drawbacks to an active minded man, I liked it and still admire its quiet beauty, though I might not have been satisfied to spend my life there. When I left, it

was with the determination to become a country squire which then filled the measure of my ambition. The introductions of a railway and also a trolley line has done but little to change the appearance of the village beyond putting it in closer connection with the metropolis of that region — the City of Hartford.

The High School of the village, which had once been famous and given character to the whole county, had degenerated so much that I was sent to the Academy at Monson, Massachusetts, of which Rev. Chas. Hammond was then the principal. Of all the teachers with whom I had then come in contact, Mr. Hammond was easily the first. In addition to being an eloquent and appreciative instructor, he had the happy faculty of winning the affection of his scholars, and completely forestalling the natural antagonism between teacher and taught, which is frequently the source of irritation between them. The school at Monson had not the reputation of the much larger schools at Easthampton or Andover, but I doubt much if it were not their equal in management and course of instruction. I continued my preparatory studies here for two years, and in the autumn of 1852 entered Yale College as a member of the class of 1856.

Yale was very different then from what it is at present. In 1852 it was a comparatively small college

of less than seven hundred students in all its departments. It is now a university with over seven thousand. But two buildings then standing still remain — South Middle, preserved as a relic of the old Brick Row, and the Library, the first of the new buildings and the pride of the College. All the rest have been demolished to make room for a handsome stone quadrangle. But even the buildings, though meagre, did not compare unfavourably with those of Harvard and Princeton, Yale's principal competitors. There were few very rich people in the country, and money was hard to raise for educational enterprises.

Though not badly prepared, I made a mistake in entering at sixteen — two years younger than the average of the class. Two years is a short time in the life of a man, but as between two boys in their teens of equal natural ability, the younger is handicapped by his age. I did not have the rooms or companionship I aspired to, and for the first two years I felt that I was not doing myself justice. At the end of my Sophomore year I resolved upon a reform, took new rooms in the Brick Row, changed my boarding place and became associated with a different class of men. I had some prejudices to overcome, but I finally succeeded in graduating, not with a high, but with a highly respectable, standing. The class of 1856 was not rated above the

average in college, but since graduation many of my classmates have risen to positions of eminence, and raised the general standing of the class to an equality with any which graduated in that decade, except the famous class of 1853, to which we all make respectful obeisance. Among the more distinguished were Mr. Justice Brewer of the Supreme Court of the United States, Senator Depew of New York, easily the leading man of his class while in College, Chief Justice Magruder of the Supreme Court of Illinois, Prof. Lewis R. Packard of Yale, Prof. Levi L. Paine of Bangor Theological Seminary, John Mason Brown of Kentucky, and Dr. Wolcott Calkins.

As I recall the four years I spent at Yale and revisit now the same scenes, I seem to have passed from mediævalism to modern life. The rooms, though not particularly uncomfortable, were shabby and received but slight attention from the "Professor of Dust and Ashes." All the accessible parts of the woodwork had been profusely illustrated by the pocket knives of former generations. The sanitary arrangements, if such they can be called, were primitive to the last degree. The hours of work were equally so. In winter we rose before dawn, attended morning prayers and a recitation by gaslight, then just introduced into the public rooms, but not into the dormitories, and sat

down to breakfast about sunrise. A daily walk to the post office was all the exercise we could afford except on Wednesday and Saturday afternoons. Attendance at chapel twice a day on Sunday was compulsory. There were no athletics except an occasional (yearly) football game between Sophomores and Freshmen, a boat club and an annual regatta with Harvard instituted and rowed at Springfield or Worcester. The frolics of those days — the sadly misnamed "Statements of Facts" to the entering class, the Burial of Euclid, Biennial Jubilee, Wooden Spoon Exhibition, etc.— have, I believe, passed into oblivion, and given place to an elaborate system of athletics which goes far toward fixing the standard of popularity of a modern university. Whether the wide expansion of the optional studies and the prominence given to athletic development adds or detracts from the value of the University as an educational institution, is a problem which can only be solved by the actual experience of those who have had occasion to compare the working of the new systems with the results of the old. It is not to be wondered at that graduates under the former régime of prescribed studies, with little opportunity for choice, should look with some distrust upon a theory which almost presupposes that a boy has already chosen his profession

when he enters college and selects his course of studies with reference to that.

After graduation, my father, who was most kind and indulgent, albeit somewhat hot tempered, offered me a year in Europe. It is needless to say that I eagerly seized upon this opportunity, then comparatively rare, of seeing something of the older world. The result justified my expectations, and I have always regarded that year (from November, 1856, to November, 1857) as the most valuable of my life from an educational point of view. Indeed a year of actual observation is a most befitting supplement to four years of study. Taken at just this time, it had a strong tendency to correct any false impressions, born of national pride or patriotism, to expand our political and religious views, and to teach the lessons so hard to learn at home, that while we have accomplished much in the direction of a higher civilisation, we have still much to learn.

A long voyage of twenty-two days in a sailing vessel afforded a convenient occasion for certain preparatory work in brushing up a most imperfect knowledge of French and German, and in familiarising myself with the countries I was about to visit. At that time nine-tenths of the passenger traffic with Europe was already carried on by steamships, although one or two of the

old Packet lines still struggled for a feeble existence and soon succumbed. If the accommodations were rude, and the fare plain, there was some compensation in the opportunity it gave for study and acquaintance with sea life. Being the only passenger, no attempt was made to conceal or disguise its hardships and brutalities. The seamen were the most ignorant and degraded foreigners — the very scum of European and American ports. Their treatment seemed to be intended to accord with their rank. They were fed upon the coarsest of food, and beaten without mercy, even to the shedding of blood, for the slightest dereliction from what the officers conceived to be their duty. I had heard that seamen in the merchant marine were treated with great harshness, but never till actual experience had I grasped the extent of its brutality. I had never heard of anything of the kind upon passenger steamships, nor indeed in recent years upon sailing vessels, except upon the oyster boats of Chesapeake Bay. Much of this improvement is due to the advancing civilisation of the age, and to the efforts of societies for the protection of seamen and the amelioration of their condition.

If within the past fifty years America has made marvellous progress in a material sense, the changes in Europe have been scarcely less noticeable. In 1856 Great Britain, Holland, Belgium, Germany and Swit-

zerland were already well supplied by railways, while France had only a few lines, and Italy and Spain practically none at all. The hotels were small, with the exception of the Hotel du Louvre in Paris, then just completed, and not to be compared in size with the leading hostelries in New York, though far exceeding them in comfort and in the quality of their food. But it is to American initiative, and the demands of American tourists, they owe their "modern conveniences," the use of ice, of lifts or elevators, then unknown, electric lighting, furnace heating, and, best of all, the private bathroom. But America is fast losing the supremacy she once possessed, and the fact that the expense of living at a European inn is scarcely more than half that at an American hotel of corresponding class, is quite sufficient to account for the enormous annual rush to Europe as the pleasantest and cheapest place to spend the summer.

The political changes during the past half century are the most noticeable of all. France, then an empire under the last of the Bonapartes, is now a prosperous republic, though paying for the transformation by the loss of two of her richest provinces. The German Empire then did not exist. Italy was divided into nearly a dozen different states, independent, but generally despotic and without the pretence of a representative body.

Each seemed to vie with the others in repressing all attempts at popular government. Many, if not most of them, raised a large portion of their revenue from State Lotteries. Even the Church, then in the active exercise of its temporal power, not only tolerated, but also fostered them. Lombardy and Venice were both provinces of Austria. Charles Albert, King of Sardinia, the most enlightened of Italian States, had made an effort to expel them in 1848, but was decisively defeated at the Battle of Navaro.

Rome, in its outward appearance, had been practically unchanged for three hundred years. Few new houses had been built, but little excavation of the ruins had been made, and it still continued a thoroughly mediæval city. Its population has since doubled and new quarters have arisen — among the finest in Europe. Utterly unable to cope with the rising tide of popular sentiment, the government could only maintain its authority by the aid of a French garrison in Rome and an Austrian garrison in Bologna. When these were withdrawn in consequence of the war between France and Austria, the people rose and made short work of Bourbon and Papal domination.

Naples, though beautiful in its surroundings, was not an especially attractive city. Its government enjoyed the distinction of being one of the worst in Eu-

rope. It was strongly fortified, but I could not but notice that its guns were all pointed *inward* — against the city, as if to sweep the streets, in case of an insurrection, and not outward to repel an invader. King Ferdinand, the so-called Bomba, was supported by an army of ignorant peasants, and by the "lazzaroni" who were then quite a political power. They were permitted to lie half-naked about the streets, exhibiting publicly their deformities as an appeal to the sympathies of the passers-by. The filth of the city was beyond the decencies of description — degradation of the common people beyond anything I have ever seen. It was but a few years after this that Garibaldi, with a small force, invaded the Kingdom of the Two Sicilies, defeated its army, put the King to flight and united it to the Kingdom of Italy. While in the moral character of its inhabitants there is much to be desired, Naples itself is clean, orderly and apparently well governed.

These travels, which included practically all of Western Europe, except Spain, occupied an entire year and really constituted a post-graduate course of the greatest value. In November, 1857, I returned home, this time in a steamship, and at once betook myself to the Squire's office in Ellington, and plunged into that most fascinating of law books —"Blackstone's Commentaries." I shall not enter into the details of my life there. I

studied faithfully and mingled somewhat in the simple social life of the village. But as at that time there was a general revival in progress, in which I took no active part, I fear my conduct did not elicit the approval of the ecclesiastical authorities, and that I was looked upon rather as a warning than an example. But my conscience was "void of offence," and I still see nothing to regret or apologise for.

In the following autumn I returned to New Haven, entered the Law School and remained until spring, when I went to Cambridge for a course of six months at Harvard Law School. This was really the pleasantest and most profitable experience of my student days. Having no compulsory duties, no chapel bell to waken me at unseemly hours, no monitors to note my absence, I felt freer to act upon my own convictions and impulses than I had ever done before. Though much inclined to do so, I did not finish the course, or take a degree, but in the autumn pitched upon Detroit as my future home, and after a little preliminary skirmishing, entered the office of Walker & Russell, to finish my studies and particularly to acquaint myself with the local practice. In the following spring I was appointed a Commissioner under a "dedimus potestatum" to take the testimony of a large number of witnesses residing in a dozen different counties in the State. As many of these were

lawyers or court officials, I formed acquaintances which were afterwards of real value. Returning to Detroit, I was admitted to the Bar in July, 1860. Detroit at that time contained several lawyers of eminent ability, whose presence would have dignified any court in the country. Such men as Jacob M. Howard, subsequently United States Senator, Halmer H. Emmons, afterwards Circuit Judge of the United States, Geo. V. N. Lothrop, Minister to Russia under the Cleveland administration, and Ashley Pond, one of the keenest legal intellects I ever met, were worthy of comparison with any with whom I subsequently came in contact in Washington.

In the autumn I took a modest office which I shared with Bela Hubbard, a valued friend and eminent citizen, and devoted myself less to the practice of law, which was meagre enough, than to familiarising myself with the Michigan Reports, of which there were then only a dozen volumes. Upon the incoming of the Lincoln administration the following spring, I was appointed by Colonel Dickey, the new Marshall of the district and a friend of the family, his office deputy. This was out of the line of professional advancement, but I had no hesitation in accepting it, as it not only gave me an immediate income, but also brought me into connection with vessel men of all classes, who naturally gravitate toward the Marshal's office whenever any question arises

as to "tying up" a vessel to secure a claim. Not long thereafter I was appointed assistant to the District Attorney, Mr. Alfred Russell, an elegant and courtly gentleman, with whom my relations were of the pleasantest description. I not only attended to a large criminal business arising out of the war, by examining witnesses before the committing magistrate, but also prepared all the indictments, attended the sessions of the grand jury, and tried them frequently in court, during the occasional prolonged absence of Mr. Russell. This was really the beginning of my professional activity, and by the expiration of the District Attorney's official term I had built up a practice, principally in the admiralty branch, which justified my taking an office to myself.

I continued in practice with a growing success until July, 1868, when I was appointed by Governor Crapo to a temporary vacancy upon the bench of the Wayne Circuit Court, then constituted of a single judge. But my incumbency was of short duration. As a presidential election was then impending, and Wayne County was strongly Democratic, I was decisively beaten at the November election, though I ran considerably ahead of my ticket. But short as my experience was, it gave me a taste for judicial life which had much to do in fixing my permanent career. Having been given by the peo-

ple to understand they wanted no more of my services on the bench, I returned to practice and was soon afterwards invited to become a partner of John S. Newberry and Ashley Pond — virtually to take the place of Mr. Newberry, who was then the leading admiralty lawyer of the place, and also largely interested in manufacturing — to the latter of which he desired to give his entire attention. I remained with the firm, and subsequently with Mr. Pond alone, for seven years, when upon the sudden death of Judge Longyear, I was appointed by President Grant District Judge for the Eastern District of Michigan. I was glad to take refuge in the comparative repose of the bench, although it involved the loss of two-thirds of my professional income. Since I felt my health was giving way under the uncongenial strifes of the Bar, and the constant fear lest by some mistake of my own the interests of my clients might be sacrificed, I felt quite content to exchange a position where one's main ambition is to *win,* for one where one's sole ambition is to do justice. The difference in the nervous strain involved gave me an incalculable relief. For the first two years it was a struggle between life and death, but thanks to a good constitution, prudent living and plenty of horseback exercise, my natural vitality triumphed and for twenty-five years thereafter my health continued to improve.

Some of the pleasantest experiences of my district judgeship were connected with sessions of the circuit court held in other States, upon the assignment of Judge Emmons, who preferred to stay at home in Detroit, while I was only too glad of the opportunity of becoming acquainted with the laws and lawyers of neighbouring jurisdictions. The first winter after my appointment I was assigned to hold a term of the circuit court in Memphis, where I remained two months. Although it was then less than eleven years since the termination of the Civil War, and the passions that it had aroused were by no means extinct, my wife and I were received with a cordiality which not only disarmed all criticism, but captivated us by its apparent genuineness. Though I was conscious of the fact that the political sympathies of the people must have been with the South, no intimation of that kind was ever made to me. Indeed we found ourselves the favoured recipients of the most refined hospitality. Dinners and receptions were given with prodigality, and our rooms at the hotel were constantly thronged by callers.

Learning that Jefferson Davis and his wife were then residents of Memphis, I expressed to my friend General Hume a wish to meet him. Occupying the position I did, I felt that I could not call upon him without ex-

posing myself to unfriendly criticism at home, and as Mr. and Mrs. Davis made no first calls themselves, I did not see my way clear to an interview. General Hume, however, solved the problem by making his house a sort of neutral ground and inviting us all to dine with him. Of course we were only too glad to accept, and I am bound to say I never spent a more delightful evening. I found Mr. Davis a most courteous and agreeable gentleman of the best Southern type, without a suggestion of arrogance or hauteur. It was difficult for me to realise that ten years before he had been a prisoner of State, immured in one of the casemates of Fort Munroe awaiting a trial for high treason as the recognised head of a great rebellion. I then appreciated for the first time that an honourable, conscientious man, removed as far as possible from the criminal classes, may be guilty of treason — a most flagitious crime when committed by an officer of the army or navy in time of war, but in civil life and in time of a general peace, often involving little more than a radical difference of political opinion. As in Mr. Davis' case, his action led to a great revolution in which half the States took sides against the government, it would have been a grave mistake to apply the legal canons of interpretation and put him upon trial like an ordinary malefactor.

Mrs. Davis was a handsome woman of refined and elegant manners, with a suggestion of imperiousness which seemed to be borne out by her reputation in Memphis. Their daughter, Winnie, then a beautiful young girl of fifteen, recited to us for our entertainment, an accomplishment much in vogue in the South, and carefully taught in their schools.

The fifteen and a half years I passed as district judge, though characterised by no event of special importance, were full of pleasurable satisfaction and were not overburdened by work. Indeed I found that I could easily dispose of the business in nine months of the year, and that there was always an opportunity for a summer's outing. There are doubtless higher offices, but I know of none in the gift of the government which contributes so much to making life worth the living as a district judgeship of the United States. My relations with the Bar were of the pleasantest description and were clouded by no event, and when the question of my promotion arose I seemed to have received practically the unanimous endorsement of the Bar and the Legislature.

At the time of my appointment Halmer H. Emmons of Detroit was filling the recently created office of circuit judge. His was one of the greatest minds I ever came in contact with, and he ought by his talents to

have been one of the leading men of the country, but unfortunately he was considered too erratic to be popular as a politician. As counsel for the Grand Trunk Railway he had become familiar with the English and Canadian courts and had conceived a great admiration for their methods of despatching business. He disposed of many cases upon the opening statements or "offers to prove" of counsel; and if he submitted the case to the jury at all, it was under such clear instructions that they found but little difficulty in reaching a verdict. He was intolerant of any want of preparation or of any inability of counsel to state in their own language the facts of the case, or the exact legal questions involved. Counsel who had been accustomed to trying cases in their own way, and consuming all the time they desired, were greatly surprised and shocked when confronted by a judge who insisted upon their trying them in *his* way, and consuming no more time than was necessary for the proper disposition of the case. He usually took sides with one counsel or the other very soon after the opening of the argument, which then took the form of a controversy between the Court and the Counsel against whom his intimation had been given. He was very patient in listening to counsel, but I noticed that he usually adhered to his original opinion, and left nothing to the counsel upon the other side but to stand by and

listen to a judgment in his favour. It was natural that with his radical departure from the accepted methods of trying cases he should at first have been unpopular with those who had been brought up under the old school of judges, but in a few years the superiority in his mode of dealing with cases became so manifest that he was rapidly winning his way to appreciation as a great judge when death overtook him in the very prime of his judicial career. In person he was tall, spare and of commanding presence. No one could look into his keen black eyes, overhung by beetling brows, and observe his alertness and decisiveness of manner without being satisfied that he was in the presence of no ordinary man.

Judge Emmons was succeeded by John Baxter of Tennessee — a judge of a very different type. He was certainly an able and upright man, absolutely fearless in the discharge of his duties, but sadly lacking in what is known as the judicial temperament. He was evidently endowed with great executive ability, and, with proper education, would have made a great general. He was thoroughly cool and self-possessed, very mild in voice and manner, but when he announced his determination no argument could possibly shake it. His will was absolutely inflexible, though his opinions were sometimes given in an almost inaudible tone. His was clearly the case of a hand of steel clad in a glove of velvet. He

cared even less for authorities than Judge Emmons. They might be stumbling blocks, but they were never insuperable. If they were in his way, his thoughts, if not his words, were "So much the worse for the authorities." He formed offhand impressions and frequently decided upon the strength of them without even listening to an argument. He differed from Judge Emmons in sometimes deciding cases without hearing the party against whom he was about to decide.

He was unpopular as a judge and was thought to be intolerably arbitrary, but it must be said to his credit that he had an intuitive knowledge of the law, was usually right and was rarely reversed. My own relations with him were pleasant, but with several of his colleagues they became much strained. His death was said to be owing to his wilfulness in disregarding the advice of his physician who had warned him against the course he insisted upon pursuing.

He was in turn succeeded by Howell E. Jackson of Tennessee — an ideal judge. If he lacked the brilliancy of Emmons, he was also free from his eccentricities. He had Baxter's instinctive sense of justice, but was always ready to listen to argument. While like most men of alert minds and quick conceptions, he formed his impressions as soon as the case was stated, he was always ready to be convinced, and his patience

was rarely exhausted. He was one of the very few judges I have known whom I never heard criticised. Indeed his character was so well rounded out that it is impossible to lay hold of any one characteristic and say that he was specially distinguished for that above all other men. If he were conspicuous for anything it was for the completeness of his intellectual equipment.

During his occasional visits to Detroit, he usually made his home at my house, and I found him the most delightful of guests. He had a fund of droll anecdotes at his disposal, which he drew upon for our amusement and told in his peculiar Southern accent. I gathered from what he said that he had political enemies in his own State, but he never spoke of them with rancour or bitterness.

One day as we were returning from court, and just as we were turning into the house, he told me that he had been informed that Mr. Justice Matthews was fatally ill, and that in case of his death he proposed to go to Washington, see President Harrison, a former colleague of his in the Senate, and persuade him to appoint me to fill the vacancy. As my aspirations had never mounted to the Supreme Bench, and I had never dreamed of it as a possibility, I was naturally surprised, especially in view of the fact that the offer came from one who was my superior in rank and that my appointment

involved a promotion over his head. It was, however, a characteristic exhibition of his own unselfishness. He made his promise good, went to Washington in my behalf, and ultimately obtained my appointment, although my classmate, Mr. Justice Brewer, was chosen to fill the first vacancy. My own appointment came a year later upon the death of Mr. Justice Miller. I may say in this connection that both Justice Brewer and myself declined to be considered competitors against each other, and that for the succeeding sixteen years our relations were intimate, and that no cloud ever arose between us. It only remains to add upon the occurrence of the next vacancy, by the death of Mr. Justice Lamar, I was instrumental in inducing President Harrison to appoint Mr. Justice Jackson in his place. This was the culmination of a friendship which continued without interruption until his death.

My appointment to the Supreme Bench necessitated my removal to Washington and the severance of family and social relations which had been the growth of thirty years. While I had been much attached to Detroit and its people, there was much to compensate me in my new sphere of activity. If the duties of the new office were not so congenial to my taste as those of district judge, it was a position of far more dignity, was better paid and was infinitely more gratifying to one's ambition.

Besides, the social attraction of the capital of a great country cannot fail to be superior to those of a purely commercial city, however large and prosperous it may be. The constantly changing character of its population, many of whom are sent there for periods of from two to twelve years, to be replaced by others equally agreeable, and the increasing influx of new people, who have made their fortunes elsewhere and remove to Washington to enjoy their later years, is sufficient of itself to make it the social, as it has been for more than a century the political, centre of the nation. There is an additional attraction in the diplomatic corps, which contains representatives of the most refined society of all the leading countries of the world.

My colleagues upon the Supreme Bench were all men of distinction and ability in their several specialties. Chief Justice Fuller was specially happy in his executive duties and his assignments of cases to us for the preparation of opinions constantly had in mind our previous experiences in particular branches of the law, the circuits from which the cases arose, as well as any interest a justice may have taken in an individual case. Each member of the Court was given his share of constitutional cases. To Justices Field, Harlan, Lamar and Brewer were usually assigned the land cases, to Gray most of the commercial cases, to Bradley, Blatchford

and myself the patent and admiralty cases, while those turning upon questions of practice were by immemorial custom disposed of by the Chief Justice. Mr. Justice Bradley was by common consent regarded as the most learned and acute lawyer; Justice Field a man of great determination and indomitable courage, though lacking the judicial temperament, as a master of forcible and elegant English; while Justice Gray expressed himself very clearly, usually in short opinions but occasionally in very long ones, for the preparation of which he sent for books from the most remote parts of the country. Though his manners were somewhat brusque, he was an excellent judge, fair minded in his opinions and a kind hearted man. Mr. Justice Harlan was a strong Federalist, with a leaning toward the popular side of cases and a frequent dissenter from the more conservative opinions of his brethren. I have never known partisan considerations to enter into the dispositions of cases. By common consent politics were abjured when taking a seat upon the Supreme Bench. By reason of his previous experience as Secretary of the Interior, Justice Lamar's assignments were chiefly confined to land cases. He had practised law but a few years, and that early in life, and always lamented his lack of special equipment for judicial labour. But he was a man of brilliant talents and one of the most genial and delightful companions I

ever knew. Justice Brewer, who had been a classmate of mine in Yale College, shared the conservative views of his uncle, Justice Field, regarding the rights of property, but was by no means his inferior as a judge.

On my seventieth birthday, and after a service of fifteen years and a half (precisely the length of my service upon the District Bench), I tendered my resignation to President Roosevelt, to take effect at the end of the term. I took this action in pursuance of a resolution I had made thirty-one years before when first appointed to the Bench. I had always regarded the Act of Congress permitting a retirement upon a full salary as a most beneficent piece of legislation, and have only wondered that more judges have not availed themselves of it. I have noticed that while many, if not most, judges made the age of seventy, very few who remain upon the bench survive another decade. During that decade the work of the Supreme Court tells heavily upon the physique of its members, and sometimes incapacitates them before they are aware of it themselves.

In addition to this I had always taken the ground that the country was entitled to the services of judges in the full possession of their faculties, and as my sight had already begun to fail, I took it as a gentle intimation that I ought to give place to another.

In discussing with the President the appointment of

a successor, I mentioned the name of Mr. Taft, then Secretary of War, as one eminently fitted for the place both by education and experience, to which the President replied that Taft was built of presidential timber. Hence I was not surprised when he afterwards became an avowed advocate of Mr. Taft's nomination. I then suggested the name of Secretary Knox, who I understood was offered but declined the appointment. Mr. Moody, then Attorney General, was appointed, but, much to the sorrow of his friends, became incapacitated after a short service and was retired by special Act.

I left Washington soon after my resignation and spent a year in foreign travel. I was received with great courtesy by our own representatives abroad, and accumulated a fund of information which has been a never failing source of pleasure.

ADDENDA

By Charles A. Kent

Mr. Brown's college life is fairly summed up in his autobiography. A letter from his classmate, the Hon. Chauncey M. Depew, to me, hereinafter quoted, adds to this.

Mr. Brown's diaries and other memoranda show that he was careful and accurate in his accounts and his expenses. His father provided for him through college and for some time thereafter. He had enough for comfort, but for no extravagances. He missed no good thing which he could afford. He was very fond of society, especially that of young ladies. He learned to dance and attended dancing parties. He learned to swim and to play billiards. Perhaps there was no college or society recreation in which he was not interested.

His standing as a student was not high at first, but it improved. He grew to be ambitious as a scholar, but he does not appear to have loved study for its own sake, nor was his standing ever of the highest. He went usually to the orthodox Congregational church of the college, sometimes to other churches. Neither in col-

lege nor afterwards was he deeply interested in religious matters. So far as he appears, his life, at least after his first two years of college, was free from vices which tempt many young men. He heard many occasional lectures of distinguished men like Thackeray, Edward Everett, Ralph Waldo Emerson, Wendell Phillips, Theodore Parker, Starr King and others, and records his opinion of each. His diaries show no touch of egotism. He was elated or depressed at different times, but there is everywhere a sober valuation of his attainments and deficiencies. He had much ill health, though not often seriously sick. Under date of March 5, 1855, there are several pages containing a brief autobiography. In it he speaks of the death of a sister and brother, his mother and his grandfather. He says of his college life: "My desire at first was merely to keep in college, and in truth I hardly did that the first term. The second term I began to do a little better. The third term I got by myself and did better than ever. Still, I was ambitious of being only a good scholar." His mother died October 10, 1853. On his return to college after her funeral he says: "I became reckless and behaved so foolishly as to ruin my college reputation for the next two years. In the meantime compositions were to be written. I thought it an impossibility to write, and accordingly got rid of them the best I could by skinning, etc. During

all this term, however, my stand was steadily increasing. Second term, Sophomore year, I resolved to do better, broke away from the miserable crowd I had been with, worked hard at my compositions, competed for a prize and shared the first prize of my division with Packard. Of a sudden I became wonderfully ambitious. Had a philosophical stand the third term of Sophomore year." June 12, 1855, is this entry: "Great excitement throughout our class in consequence of Senior societies. Men that have cursed scroll and key since Freshman year, losing skull and bones, go there. I won't go there by any means. Oh, the duplicity of college life." October 12, 1855, he writes: "Have not the moral courage to appear in public with my new beaver."

December 10 he writes: "Made some good resolutions. Query. How long will they last?" He occasionally sleeps over morning prayers. January 31, 1856, is this entry: "Employed myself in contemplating the delightful fact that I have some lessons to make up." March 2 he writes: "My romantic period is past. Went to prayers and class meeting the first time within a year." March 20 is the entry: "Selected for my Townsend subject, 'Public armaments as instruments used by despotisms to debase the people.'" April 23 he writes that he attended St. Patrick's Cathedral, in the morning mass. June 11 he is informed that he has won

a Townsend and feels fine in consequence. June 22 he enters a statement of his standing, which averages a little less than three on a standard of five as perfection. July 19 he joined the Phi Beta Kappa. He had much difficulty in selecting a subject for his commencement address.

July 24 he feels disturbed regarding his commencement address. Thinks it does not do him justice. Half a mind not to speak. Writes: "My maiden dress coat arrived this evening from the best tailor in town."

After graduating he was for some weeks undecided what to do next. August 20 he writes: "Shall I teach or go to South America next year?" September 12 he says: "What shall I do next year? Most favour my entering a law office immediately, which I veto." September 18 he says: "Commenced this day the study of the Spanish language, in anticipation of spending a winter in Cuba."

October 9 he concluded to go to Europe on a sailing vessel, apparently because his uncle owned the ship and gave him his passage.

The ship sailed October 24. The passage was pleasant and he was sick but one day.

He landed at Liverpool, went from there to Warwick and Stratford, thence to Oxford and then to London. He spent several days there visiting the usual sights.

Thence he went to Paris, where he stayed several weeks. There he took lessons in French, and made such proficiency that soon afterwards he was able to read that language easily, though perhaps he could never speak it with much fluency. He attended lectures at the Sorbonne.

He makes this summary of the year 1856. "On the whole I decide it the most profitable year of my life and certainly the most pleasant. My Townsend was a success, my commencement effort a failure, my principal false move was in taking too much advice as to my course immediately on leaving college and hesitating so long before starting for Europe. I lost three valuable months in dallying when I should have been across the Atlantic, but I am fairly here now and bound to make the most of it. My Townsend established my position as a writer on an honourable basis, but my old hesitation at extempore speaking still continues. Shall I ever conquer? It is the greatest obstacle to success. With my stand as a scholar, considering my fearful blunders Freshman year, I am pretty well satisfied. I kept my oration, and I could not have done more without seriously injuring my other prospects. My progress in French does not suit me. I find extreme difficulty in understanding what is said, more than in saying what I wish myself. I have not money enough to employ a teacher regularly

and am considerably nonplussed at my prospects as a linguist. Certainly the year could not have been spent more agreeably. While in college I had a splendid boarding place and room with the best society in the class. The winter term and spring vacation were especially snug and jolly. My voyage across the Atlantic was not particularly pleasant, but my subsequent experiences have been exceedingly interesting. My failure at commencement was attributed to a fortnight of toothache following presentation, long hesitation about a subject and a final choice of an equivocal one, general disgust for labour after a Townsend and Biennial, and a knowledge that great things were expected and that many friends would be present."

January 17, 1857, he says: "My progress in French is now pretty satisfactory and I am able to understand it when not spoken too fast."

On the 10th he says: "I am left with two francs and am in momentary expectation of a washing bill larger than that. What am I to do?" January 20 he says: "O climax of ecstasy! O delightful inconceivable! Learning that the European mail had arrived I went over to Livingston's and at last received my long wished for, long despaired of letter, and I am now the happy possessor of 1000 francs."

From Paris he went through Italy and thence to Swit-

zerland, Germany and England, everywhere enjoying life.

At the end of the diary of 1857 he makes a summary of that year as follows:

"The commencement of this eventful year found me in a precarious situation; the end finds me as snugly harboured as one could desire. The year has been both profitable and agreeable. My first difficulties in French gradually wore away, and I have now a good reading knowledge of the language and a passable speaking knowledge. German, though, was the decided hit. I never was better pleased with my progress in any branch. Though my vocabulary is limited, my pronunciation is good and the substructure solid. Travelling gives a wonderful expansion to one's ideas. My ideas of geography seem to me now to have been singularly incorrect, but being on the spot is likely to fix the location sufficiently permanently. On the whole, I am well satisfied with the course I took, only regretting I could not have visited Spain."

Mr. Brown's diary, while abroad, is written in such fine characters that it is almost impossible to read it without a microscope. If this was not the beginning, at least it must have contributed to his lifelong trouble with his eyes.

The course of Mr. Brown's legal education is suffi-

ciently sketched in his autobiography. In the year 1859 he heard Wendell Phillips twice and was much impressed with his power as a speaker, but was shocked by some of his views. He thinks him a demagogue.

During this year he suffered much from his eyes. November 8 he started for the West, going by way of New York, Philadelphia and Pittsburg. At the latter place he called on Judge Andrews, to whom he had a letter of introduction. The judge gave him two letters to Detroit, but no hopes of entering into business with him. From there he went to Marshall, where he had an uncle on his mother's side. He stayed in Marshall until December 6, when he went to Detroit. There he was quite homesick for a time. On December 19 he says: "How homesick I am. Seeking a decent protest to go East." He soon got pleasant friends in Detroit and was more cheerful. He joined a literary club and went into society a good deal. At the end of the year he makes the following review:

Reflections at the end of 1859: "The last six months of the year have been greatly embittered by the failure of my eyes. I have been forced entirely to relinquish reading after sunset and thus am deprived of all opportunity of cultivating literary tastes, to which I devoted my evenings the first half of the year and in which I made considerable progress. I attribute the disease

either to the strong gas light I used in the Cambridge library, or to salve E. M. Brockway gave me to take the redness from my lids. The occasion, I am afraid, was my anxiety to succeed in that unfortunate prize affair in New Haven. My eyes, since the relapse I suffered at Gorham on November 28, by sitting two hours in front of a shining light, are slowly improving, though I fear the improvement is but temporary. Probably shall not be able to read much evenings until next winter, if then. God grant I may never be blind. Aside from this, the year has been well spent, although my departure from New Haven was characterised by one or two unpleasant incidents. My career in Cambridge was a decided success. I gained all the honours I could compete for, and stood well in the esteem of my fellow-students. My spring and summer vacations were, on the whole, pleasantly spent. It is yet somewhat uncertain whether I shall remain permanently in Detroit or not, and it will depend mostly upon whether I get an opportunity of entering into partnership with an established lawyer or not. I like the place, am reading in the largest office and boarding at the best hotel. The people are extremely hospitable and receive me freely into their society. My prejudices are still in some respects in favour of the East."

The diary of 1860 shows continued interest in society,

and taking part as a Republican in politics. He attended lectures of eminent men and gives his criticism. On Sundays he usually attended church, but at many different places until he took a pew in the Fort Street Presbyterian. His eyes still trouble him very much. He delivered a Fourth of July oration at Marshall to his satisfaction and that of the audience. July 13 is the entry: "Have concluded to go East. Query. Shall I stay? I don't feel at home in Detroit." July 25 he started for the East. August 25 he was in Providence and was there offered a seat in a lawyer's office, which he accepted August 28. August 29 he enters: "Have I got to return to Detroit?" August 30, he writes: "Have nearly made up my mind it is my destiny to return to Detroit. Would remain here were it not for a rule requiring students to study six months." September 20 he started back to Detroit. Thereafter he does not appear to have thought of change. October 10 he says: "Hard up for cash, in short completely drained." October 22 he says: "Emphatically hard up for cash and creditors pressing." October 26 he writes: "My long expected remittance arrived. Purchased $142 worth of law books and paid a few debts. Took my first attorney's fee of $5.00. November 6, voted for Lincoln, but bolted congressmen and some inferior officers." Reflections at the end of 1860:

"A great disgust which I conceived for Detroit at the beginning of the year, and which came near driving me to Providence last summer, has not entirely disappeared. The truth is, I am not more than half reconciled to the West, and were it not for the proximity of my uncle's family, I think it extremely doubtful if I remained here. I am sometimes half sorry I did not stay in Providence. My accidental seat in Walker & Russell's office was a lucky hit in that it gave me Whispering Smith's depositions, a job which rescued me from a tremendous financial precipice and gave me several valuable acquaintances, one of whom, Miller of Grand Rapids, has given me nearly all the civil business I have had. My eyes (may the Lord in his mercy be thanked) have been strong enough since October to permit of my reading evenings by the light of a coal oil lamp with a porcelain shade, the only light soft enough for them to endure. The first nine months they were entirely useless after sundown so far as reading was concerned, and were a great source of annoyance and discouragement. As far as my business goes my situation is not peculiarly encouraging. I have done but little because I could get but little to do, and it is not in my nature to drum business as most Western lawyers do, but a young lawyer must not expect much. I do not despair. I hoped to have had an opportunity of delivering a lecture this

winter, but none has occurred as yet. The Young Men's Society here is a humbug. I am not entirely destitute of friends, I hope.

"The situation of the country is dreadful and civil war appears almost inevitable. Anything but disunion; God help us."

March 12, 1861, he writes: "Eyes feeling uncomfortable again. Have I another year of blindness and misery? Oh, God, I hope not." March 14: "But little to do now. General decay of business."

April 10: "Called on Colonel Dickey at Michigan Exchange at eve. Applied through him for the office of United States Deputy Marshal. Mizner competes with me, and will probably get it."

April 11: "Got the appointment and moved into new office in the Federal Building."

April 14 is this entry: "Fall of Sumter. Beginning of a long war of which no man can see the end."

Other entries show his interest in the war and devotion to the North.

April 18: He hears he has been appointed Assistant United States District Attorney and writes: "Oh, Lord, ain't it good."

July 2: "Received invitation to deliver Fourth of July oration at Flat Rock, and went vigorously to work patching up my last year's effort, adapting it to the

times." July 4: "Went down to Flat Rock to relieve myself of speech. Found that most of them knew nothing about a celebration. Spoke in church to fifty auditors. Was presented with $1.63 for my effort."

September 3: He joined a military company, called the Holt Guards, and thereafter drilled with them from time to time.

On the last of the year he makes the entry: "The past year has been one of universal prosperity. Its chief event — my appointment as Deputy Marshal and Assistant United States District Attorney — was upon the whole, I think, a very fortunate one. While it has the effect of withdrawing me to a certain extent from the fellowship of the profession, and of making me less ardent in the pursuit of business than I should be, if I have nothing else to depend upon for my support, yet I think its tendency will be to introduce me into an acquaintance with the leading men of the State and throw in my way some professional business.

"Indeed I have already had quite a number of admiralty cases (for which I have a particular partiality), brought to me through my connection with the marshal's office. It has also brought me one or two excellent clients. My professional business is much greater than it was a year ago, and long may it live and grow. My health is superb and socially everything is going on

swimmingly, although I have not found the right one yet.

"The country, my greatest source of anxiety at present, is in a dreadful state. We have entered upon a war to which I can see no possible end, during the present administration. As I see its inevitable consequences in the loss of life and property, in the vast issues of paper money and consequent high prices, and depreciation of the currency, and in the breaking up of the whole social system, it absolutely makes me shudder. What its end will be no man can tell, but all can safely prophesy that it will work immense injury to both sections."

1862 — January 4 — is the entry: "Commenced making up a most vexatious account for Washington. Moses, how I dread it." January 13: "Took part in Young Men's Society debate on Emancipation Question. Was obliged to advocate it. Oh!"

January 25 he notes the purchase of "Alison's Europe."

In May of this year he appears to have had a love affair which was unsuccessful and made him unhappy for a time.

May 30 he argued his first case in the Supreme Court of Michigan. May 31 he finished his argument and is beaten, and enters: "Verily there is little certainty in the law." June 7 and following he takes lessons in elo-

cution of a well-known teacher — Professor Taverner.

June 9 he began writing a Fourth of July oration, though he had no invitation to speak. July 4 he writes: "Spent A. M. practising my speech. Orated in P. M. at Michigan State Retreat grounds to an audience mostly Catholics." July 24 he writes: "Must I go into the army?" During this month he went East to commencement at New Haven, thence to his father's, thence to New York, Philadelphia, Baltimore and Washington, thence to Winchester and Martinsburgh, seeing something of war matters, thence home, arriving at Detroit August 30. September 1 he writes: "Civil life is getting stale. Shall I go into the army? The only profession in this country is grim visaged war."

September 12 he writes: "Was wofully disappointed to-day in not being elected lieutenant of my ward. Thwarted by malignity of an enemy whom I never harmed. Revenge!"

September 18: "Attended ward caucus this eve, and being only Yankee there, was overcome with honours. Delegate to county convention, president of meeting, chairman of ward committee!!!" October 11: "Commenced studying German once more." November 6: He went hunting. He often this fall attended Republican political meetings. November 21: He notes his first acquaintance with the Pitts family, and on the 24th

that he attended a Gottschalk concert with Caroline Pitts, "a lovely damsel," who became his wife. There are many subsequent entries this year as to his courtship with Miss Pitts.

At the end of 1862 he makes this entry: "This has been a prosperous year for me. My connection with the Marshal's office, I think, is proving an advantage to me in making me acquainted with the leading men of the State and introducing me gradually, though slowly, into business. After the 1st of July I ceased to act as the regular office deputy of the Marshal, which place Charley Dickey stepped into. I still hold my seat in the office, retaining a very pleasant sinecure out of it. My Eastern collections latterly have diminished, owing to the business put into my hands by the Graydons being completed. My eyes, thank God, trouble me no more.

"Twice I thought very seriously of participating in the terrible Civil War which has raged the entire year, but circumstances which I now regard as fortunate prevented my entering the service. In my position as Assistant District Attorney, for the last six months, merely a nominal office, I was superseded in April by Mr. Russell, now District Attorney, appointing his brother George. Such is the ingratitude of republics. The close of the year finds me again filling my old place as Assistant, Mr. Russell having gone to Washington and

George having too much to do. Last winter I confined myself much to my room evenings. This winter I go more into society, partly as a matter of policy.

"Am not married yet; I believe, though, subject to my old distractions. My experiences this year have been more than usually touching. Ah! I may not even commit to this paper my emotions, disappointment in the bewitching ——. Weather has been wet and warm and not a day of skating yet. My proximity to Marshal and the Don (a cousin) is delightful, particularly as I have a pass on the Central. Everything now wears the *couleur de rose*. I dare not believe things will always remain thus. . . . Admiralty business quite a source of revenue last year, very poor this summer. Times were too good, vessels paid too well. My other law business gradually increases. Oh, for more cheek to fight for it! The condition of the country could hardly be worse, and we are on the verge of a general dissolution. Even politicians are almost silent. We are holding our breath awaiting what may come. President weak, cabinet divided and paralysed. Generals in conflict, armies defeated, we all hope for some great change. Pray God it may result in our permanent good. All hope of extinguishing the rebellion must be laid aside. The people have done more than nobly though. Of general literature I have time to read but little now. I have

recommenced the study of German, though, and mean to master the language sooner or later. Health excellent."

1863: There are many entries showing his attention to Miss Pitts, and his engagement some time in July. He regrets greatly the division of Michigan into the Eastern and Western Federal Courts, apparently because of its effect on his business as Assistant District Attorney. February 14: "Attended meetings of Union Club at eve and was appointed delegate to the National Convention at Cincinnati." He delivered a Fourth of July oration at Plymouth to an audience apparently attentive, though not enthusiastic. He notes with joy the great victories at Gettysburg and Vicksburgh. There is this entry at the end of the year: "The past year has been to me one of unlimited prosperity, although owing to the general and unlimited falling off of collection business, my professional emoluments have perhaps been equalled, if not exceeded by that of the previous year, yet I think there has been a slow though steady increase in other classes of cases, keeping pace with a corresponding growth of influence and acquaintances. Indeed I am closing the year with a fair little docket of admiralty cases, and that too in mid-winter. If a bankrupt law is passed, I shall make extraordinary exertion to reach a new class of cases growing out of it. I do not expect

collection business to revive much until the close of the war and hard times come on, when the lawyers will begin to thrive again. How sad it is to think that our prosperity generally grows fat upon the miseries of the rest of the world. Criminal business I have not looked at during the past year. My reputation is not sufficiently established to have it come to me, and I consider a search for it as too degrading for any respectable lawyer. My official duties have been increased by my reappointment as Assistant District Attorney, about the first of October last. This has reduced my leisure hours to almost nothing and left hardly time to read the daily newspapers, much less enter upon any extensive literary undertaking. I have been endeavouring for the past six months to find time to write a political paper, but thus far have made very little progress. My annual Fourth of July oration is all I can accomplish. During the summer, however, I rose half an hour before breakfast and read a few lines of Cicero, a practice I intend to adhere to in the future. I am making another spasmodic effort to learn German, and have commenced a course of lessons under a lady teacher. I really intend to acquire that language, although it may take years to do it. My health could not be better than it has been the past year, and I do not now recall a single sick day. The beginning of the New Year finds me a perfectly

healthy man and not exempt from draft. Perhaps the most important episode of the year is my engagement to Carry Pitts. I see in her now almost all that I could hope for or desire in a wife, and I trust during the coming year to throw the white veil over her shoulders. Well, I believe on the whole I am a pretty lucky fellow, and I cannot see that I have anything to complain about."

July 13, 1864, Mr. Brown was married to Caroline Pitts. Her father was of an old and distinguished New England family. He was a graduate of Harvard College. He was an intellectual, cultivated and capable gentleman. He studied and practised law for a time. Afterwards he was engaged in the lumber business and became a man of wealth. The family had a high social position. There were three daughters besides Mrs. Brown and one son. Mrs. Brown was fine looking, well educated, intellectual, and sympathetic with all her husband's ambitions. The marriage was a very happy one. There were no children. She suffered much from ill health. After his marriage his society was largely with her friends and relations, but their acquaintance extended to the most cultured and wealthy people of the city.

The happy couple had a wedding tour down the St. Lawrence, Montreal and Quebec, and visiting old friends

and relatives in New England. On their return they boarded first at the Russell House and afterwards with Mr. Pitts, changing apparently because of the enormous price demanded by the former. The last of August he bought a substitute for the war and paid him $850.

September 20 he writes of the excitement produced by the rebel raid on Lake Erie. On the 29th he attended the draft proceedings, though he had no personal interest, because he had furnished a substitute. November 28 and December 16 and 17 he criticises in the strongest language the conduct of the judge before whom he was practising. December 14 he writes: "Tried a weak case against —— and convicted him. Tried a very strong case of smuggling in P. M. and jury stood nine for acquittal and three for conviction. Such are our boasted privileges of trial by jury."

At the end of 1864 he writes: "The great overshadowing event of the year 1864 is undoubtedly matrimony, and for this the year becomes memorable in my private annals. I don't know that a man with a good wife has any reason to grumble that he has lost his attraction among the fair sex. Business continues with increasing prosperity, although I have not that firm hold in the profession that enables me to look lightly upon the possible loss of official emoluments. My income, though larger by nearly $300.00 than ever before, was,

for the first time, insufficient to meet my expenses; this, however, is attributed not to extravagance or the luxury of a wife, but to the necessity of procuring a substitute. This was a loss of $675, for which I had nothing to show. My situation now is peculiarly pleasant, a good home, a devoted wife, a prosperous business, greenbacks enough; in short, have I not more reasons to be grateful than any man in the State? My position as Assistant District Attorney has thrown me into some important cases, where I seem to have acquitted myself to the satisfaction of my friends at least. In short, I am all right, barring a slight shuddering at the thought of my health."

1865: February 13 and for some weeks thereafter he suffered much pain from what he terms a "local trouble" which prevented him from walking, but did not keep him from his business. April 3 he writes: "Oh, Lord, that I should live to see this day — Richmond taken — end of the war. Great jubilee, stores and offices close. Wandered around the city till late at night like one demented. Nothing but ringing of bells, hoisting of flags, enthusiasm and cheers."

June 23 he accepted an invitation to deliver a Fourth of July address at St. John's. September 28 he writes of going to see his farm. October 7 he writes: "Called on Dr. Noyes to have my eyes attended to. They are troubling me much again." October 23 he writes: "At-

tended Bar meeting at Biddle House. To my astonishment was called upon the second one to respond to a regular toast. Made a bad bull of it, spoiled my evening." November 1 he notes that he had a bad job in collecting a note from the Chief Justice of the State. November 28 he notes an attendance on a new literary club where the eight-hour movement was talked over.

December 22 and 24 he was writing an article on the Alabama claims to be read at a club. December 31 he notes: "Sat up pursuant to custom to see the New Year."

1866, January 8, he writes: "Retained in an elegant murder case, where a gentleman chopped his sister in pieces with an axe."

February 8 he writes: "General Sherman in town to-day. Got an introduction to him by a masterly piece of strategy." February 23: "Commenced writing an essay on Jeff Davis for the Club." Sunday, March 18, he writes: "Was forced to go down to law library a few minutes much against my will." April 9: "Indications now that I shall build this summer." May 10: After a defeat in a criminal case, when he was defeated by the jury, he writes: "Monstrous poor luck I have had in trying cases. Guess I am not much of a lawyer." May 16 he writes: "Elegant murder case comes down from Port Huron." July 17 to August 14 he was

absent from Detroit, going to New Haven and Watch Hill. September 21 he writes thus: "Put not your trust in princes, alas for the uncertainty of human glory. The axe has fallen, and Dickey's head has tumbled into the basket. Notice of Colonel Parkhurst's appointment received this A. M. *'Sic transit gloria Mundi.'*" On the 22nd he attended a Republican ward caucus and on the 29th he changes his office because of the new marshal.

October 15 he writes: "Got the first bid on my house to-day, and was dreadfully discouraged to find it $6822.00, exclusive of the lumber. Horrible! Lost all heart for the thing." Still, October 26 he enters into a contract for building the house. It was built on Jefferson Avenue next to that of his wife's parents. It was of wood. He resided there until much later. This house was moved and a far more expensive one was built of brick on the same ground, where he lived until his removal to Washington. November 6, election day, he spent two hours at the polls. November 7 he writes: "Glorious victory all around. Democracy utterly prostrate. Thank heaven for that." December 21 and 22 he was so sick as to call a doctor. After his marriage he went with his wife's family to the church of Dr. Duffield, an old-school Presbyterian clergyman, able but very orthodox. Sunday, December 30, is the entry: "Heard

Dr. Duffield for the last time this winter. Gave us a solid hour and a half of bigotry and nonsense. Can't stand it any longer. Am going to commence the New Year with the good resolution not to go again."

1867: January 1 he made New Year's calls as usual with two friends. He spent the day and achieved the number of eighty. January 20 he writes: "Eyes not strong enough to use much by candlelight." February 2 he writes: "Tried a justice case this morning and to my thorough disgust and chagrin got beaten, although I was for plaintiff and had a perfectly good case."

February 15 and 16 he was sick enough to send for a doctor. March 20: "Attended a ward caucus and got elected a delegate to the county convention. 21st: Spent most of the day in Republican county convention to nominate delegates to the Congressional convention. As chairman of the committee had the virtual designation of delegates myself."

March 23 he writes: "Absolutely nothing to do. Getting to feel disheartened at lack of business." 27th: He was nominated Vice-President of the Young Men's Society and declined the nomination. April 7 and for some days thereafter he suffered from a painful boil. 26th: "Admiralty cases decided against me. Mad but can't help it." Several days in April he notes that he is working on his garden — business dull. May 10:

"Very busy in office all day." June 26 he notices the sudden death of Judge Witherell and the resignation of the Bar. He worked to secure the appointment of C. I. Walker as Witherell's successor. July 11: "Argued my first case before Judge Walker this morning. Ah, how different from what we have been accustomed to. The golden age is approaching. But one more death is needed to bring it on." July 9 Mr. Pitts is taken seriously sick. July 14: "Did not go to church. Sunday hangs heavily unless a fellow goes to church in the morning." August 3: "Was requested to run for alderman, but declined." Sunday, August 25, he enters: "Did not go out at all, Carry wishing me to stay with her. Felt guilty though." August 29: "Business driving. See lots ahead." August 31: "Alarming sign of failing of my eyes. Must I give it up?" Other subsequent entries show a continuance of trouble with his eyes. September 10 he writes: "Have little to do in office. Took possession of our new house after ten, and slept in our front chamber at last. Presented with a beautiful set of furniture and plate, with everything to make us happy; but Carry's health. Did my first marketing." September 20: Because of some act of the Federal Judge he writes: "God, what a tyrant we have to rule over us!" October 10: "Charles Sumner called on the Pitts. I seized the opportunity to see

him." October 10: He heard an "elegant" lecture from Charles Sumner and says: "He is not a very accurate speaker, but is a man of truly noble presence and magnificent bearing." October 19: "Attended Republican caucus. Made a speech and elected delegate." October 24: "Attended Bar supper. Resolved not to be caught as I was last year. Prepared myself and was not called on." November 20: "Overburdened with work, scratched away until 10 P. M." 22nd: "Work getting dreadfully behind hand."

1868, January 1: "Made seventy-eight calls." 3rd: "Suffered a humiliating defeat in a justice court today, caused by my own negligence. Felt too chagrined to enjoy a family tea party at the Pitts." March 7: "Tendered my resignation as Assistant United States District Attorney, to take effect on the first of May." March 10: "Attended Republican caucus. Elected president and delegate to county convention." 12th: "Spoke afterward at county convention. Appointed delegate to State convention. In April Judge Walker announced his intention of resigning the circuit judgeship; the salary of judge was then but $1500 per annum. Judge Walker took the place, expecting the salary to be raised. It was not, and he resigned."

Sunday, April 26: "Did not go to church on account of alarming attack of Mr. Pitts. Started, but was called

back. Grew worse until two, when death struggle commenced and ceased not until twelve, when he died."

Mrs. Brown, as one of the heirs of her father, inherited what was then a large fortune, and she, with the other heirs, became partners in a lumber business. Mr. Pitts was but fifty-eight. The Browns appear to have become independent of his law business, and to this must be attributed his subsequent pursuit of office. May 27: He attended the convention which nominated General Grant. May 28: "Spent good part of day preparing speech for a Republican rally, but my heart, as usual, failed me at the last moment, and though called on I declined." June 25: He was appointed Judge of the Wayne Circuit by the Governor in place of Judge Walker, who had resigned. July 2: He took his seat on the Bench and soon after he went East to Saratoga and elsewhere. While East a doctor whom he consulted "communicated the disastrous intelligence that my beloved wife must go into the hospital in the fall. Had a good cry all around." July 24: "Got home and attended to his judicial duties." Sunday, July 19: "Sorry to say I wrote considerably on opinions." 24th: "The servant ladies both notified me of their intention to leave. Let 'em go, d——n 'em!" September 13: "Sorry to say I violated the Sabbath by writing opinions." September 14: He was nom-

inated for circuit judge by the Republicans. September 21: He notes that his wife reduced to writing an opinion he had formed. October 1: "Spent the afternoon in a meeting of the county committee looking over prospects of election." October 30: "Sick and disgusted with political business. Had to lock the doors of my office to keep out political beggars." He made considerable effort to get elected — printing slips. On election day, November 3, he drove around to every poll in the city. "Kept slips in the hands of all my friends." November 4: "Woke up to find myself whipped, as I expected. Busied myself during the day figuring up majorities which I estimated at about three hundred and fifty. Ran five hundred and twenty ahead in the city." Judge Brown was defeated by a candidate far inferior, simply because the Democrats were in a majority in this county. He continued to be judge until November 21, and soon after became a partner in the firm of Newberry, Pond & Brown. This was a most important step in his professional progress, and soon gave him business of more importance than he had before had. Still for some time thereafter he continued to try justice and criminal cases.

1869, February 10: He attended a Republican convention for the nomination of regents as a delegate, and was appointed chairman of the committee on resolu-

tions. March 1: He writes: "Learn that Russell is a candidate for the district judgeship, which lays me low. Felt blue." March 2: "Thirty-third birthday, no grey hairs, but growing bald." 31st: He delivered an address to the graduating law class at Ann Arbor and dined at Judge Cooley's. April 3: "Friend Larned is backing me for the district judgeship." This refers to the time when Judge Wilkins was about to retire. 9th: "Argued and submitted Foster case in Superior Court this morning. Ought to win, but my usual luck will probably follow me." May 29: "Invited to deliver a short address at the Medical Commencement June 8." 31st: "Very much pressed with business. Commencing new suits all the time." June 18: "Have formed the habit of taking an hour's nap after dinner and like it hugely."

July 1: He notes that he won a verdict of not guilty in a criminal case, but adds: "The old cuss is guilty, I believe."

July 5: He went East with a large family party. He reached home July 11 and says: "Concluded the great pleasure of travelling was in getting home."

The 20th he makes this observation: "Passed an anxious, miserable day. Divided the human race into two classes — those who are born to speculate and those who are not. I am not. Few who labour with their

brains are." 21st: "Won disgracefully a little case in the justice's court. The justice of the peace's partiality so marked I was ashamed of him and myself." 24th: "Closed a bargain for a Jefferson Avenue lot for $9000.00. Now for a struggle to raise the money. For the first time in my life am obliged to borrow, accursed word." 28th: "Making very little money." August 11: "No money, awful hard up." 27th: "Made blue hearing of Harvard's defeat in Oxford boat race." October 4: "Three decisions in my favour in Wayne Circuit to-day. Patchin [his successful opponent] not such a bad judge after all." November 9: "Bad news from Ionia; case went against me, cuss the judge." November 28, Thanksgiving Day: "Dined gorgeously at the Pitts and got very mellow on champagne." 30th: "Defended some boys for robbery and got whaled. Judge Wilkins sent 'em up cruelly for thirteen years. I trust this may be his last official act in which I may be interested." December 9: "Spent most of P. M. at a Bar meeting to celebrate Judge Wilkins' retirement." Judge Wilkins was succeeded by Judge Longyear. 1870, January 11: He goes to Toledo to try a case and says: "Find Waite [afterwards Chief Justice of the Supreme Court] the nearest my beau ideal of a lawyer I ever saw." 28th: "Very blue day; lots of bills and no money; heaps of regrets and few prospects."

February 9: "Felt blue and full of disappointments." May 11: He notes the delivery of his opening lecture on Medical Jurisprudence. May 23 and 24 he notes that he is very blue. Sunday, June 12 he says: "Attended church and became sort of disaffected. Think I'll not go any more." He did not adhere to his resolution. September 18: Sunday, he attended St. Paul's in A. M. and Christ's Church in the eve. October 24, he writes: "Blockhead Patchin decided a case against me this morning."

October 30, Sunday: "Spent pleasant evening with Carry reading poetry." November 1: "Made a political speech to a ward meeting, not a happy effort."

November 17: "Resolved that under no circumstances will I ever employ counsel in a case involving less than $1000.00 or call one in the midst of a case."

November 29: "Spent the entire morning trying the last small justice case I shall ever dabble with." November 30: "Came down after dinner to a woman's suffrage convention and heard some viragoes talk. Returned disgusted." December 16: "Went to hear the divine Neilson. She charges high, but she ravishes. The most adorable singing ever heard." January 4, 1871: "Was sick with a terrible headache and went to bed at four o'clock." January 14: "Great financial disaster of N. P. & B." May 13: "Attended a citizens'

meeting to see about opening the new city hall. Russell chosen orator, somewhat to my chagrin." 22nd: "Gave fourth lecture to medix." 31st: "Bar supper. Spoke among others." June 8: "A black day, blue black day of mortifications." 19th: "Last lecture at the medical school, perhaps for aye." 23rd: "Went as one of a committee to select a minister. Selected and got Rev. Geo. D. Baker and was pleased with him." 1872, January 2: "Park meeting this evening a sell. Got off a little speech and was interrupted before finishing. Much labour lost. Distrust prepared speeches. Better extempore." 15th: "Attended first political meeting of the campaign at postmaster's room."

February 2: "Terrific headache. Worst of the season. Too sick to argue motion in the United States Court." He was subject to many headaches at this time. 29th: While at Buffalo, New York, on law business, he was sued, much to his annoyance, but on what grounds does not appear.

April 4: "For the first time in many years begin to feel that I would like more law business than I have got." 6th: "Elected President of tenth ward Republican Club." June 3: "Commenced at $25.00 per week to Carry, she to pay all provision bills, including women servants' wages, taking care of yard and other odd jobs about the house."

May 14: "Find my name on the slate for Congress." July 10: "Attended meeting of Republican Club and made a short and very unsatisfactory speech. Something must be done or I must give up extempore speaking." At this time he became a candidate for the Republican nomination for Congress. Moses W. Field was his successful opponent. Mr. Brown made an active canvass. August 2 he writes: "Drove down into ninth ward to 'fix things' for caucus to-night. Walked up after tea and settled my last night's bills, a good round sum too. Expensive business, carrying the tenth." August 6: "Made final preparations for the convention to-morrow. Called canvass of friends. Drove out to Greenfield after tea to see a delegate. I can truly say I have done nothing and left nothing undone which I regret, and yet I care not a fig for the nomination."

August 7, he writes, the day of his defeat in his race for the Republican nomination for Congress: "Went in and got scooped out, very little to my sorrow, a victim of bad advice. Mustered but twenty-eight votes out of ninety; a good compliment, but not enough to elect. Resumed the practice of law at four o'clock, a wiser, but not a sadder, man." September 2: "Find I must give up coffee and ought to give up smoking."

November 1: "Satisfied myself that Field would be elected and began to grieve that I did not get the nom-

ination." November 7: "Sorry I was not nominated."

November 16: "Defended chap for receiving stolen goods and got beaten, as I deserved." November 19: "Very busy, lots of work, but poor pay." December 3: "To-day the firm of Newberry, Pond & Brown ceases to exist, and to-morrow the firm of Pond & Brown commences business."

At the end of 1872 there is this entry: "The year 1872, full of public calamities, disasters by fires, floods and moving accidents, has not been particularly eventful to me personally. Barring my unfortunate Congressional candidature, the current of my life ran smoothly. I have made large additions to my law library. My business becomes steadily more profitable, and I think I can safely say I am not failing in influence. One resolve I make at the close of the year — to devote one month of every year hereafter to recreation. I mean that nothing shall interfere with that."

1873, January 9: "Encountered an awful excoriating in the Sunnyside case. Judge intimated he should beat me so strongly that 'tother side said nothing." January 17: "Getting up an article on judicial salaries."

February 23: He notes that he began work on a volume of reports. This became "Brown's Admiralty Reports," which is well known among admiralty lawyers.

March 11: "Went down to Common Council to log roll a little." January 21: "Engaged passage on steamer *Republic* for Liverpool." March 31: "Great excitement through the town on the judicial question. Bar held a meeting in the evening and nominated Pond." April 1: "Poor Pond in a peck of trouble, almost in tears. Begged hard to get out of it." 2nd: "Pond and his friends beg me to let my name be used before the committee. I finally consented, although I know it will be useless." 3rd: "Convention met to-day and committee did not nominate me, but Jennison." The nomination was for the Superior Court. Cochrane was nominated by the Democrats and elected April 28; Mr. Brown was beaten in a case against him personally in Buffalo, New York, and a verdict rendered of $1616.00. He was much disgusted.

In June, Mr. Brown sailed for Europe and was gone about two months. He was in Edinburgh, London, Paris and Brussels, and at the latter place bought $2000 worth of pictures. August 28: On return voyage he writes: "Fell violently in love with a girl from Ogdensburgh." In October he went to Washington to try his first case in the Supreme Court and writes this: "Found Judge Parker at the Arlington, who moved my admission to the Supreme Court. Swell Court, big dignity." That day and the next he called on most of the

justices. November 20 and 21 he enters that he was "blue, blue, blue." November 28 he enters: "Overburdened with work." December 17: "Annual meeting and sociable of First Protestant Society. Of course put on a committee. Vowed almost I'd never go to another public meeting." December 31 he enters: "The year just closed has not been remarkably prosperous. My income has not been as great and a number of disagreeable things have happened. Its chief pleasurable feature is my trip to Europe. Sickness in Pond's family made serious inroads on business and diminished largely our receipts. My own share has been as large as usual. On the whole, glad it's gone."

1874, January 1: He made many New Year calls as usual. 2nd: "Turned over a new leaf and resolved among other things to make clients pay." 9th: "Office crowded with clients, more than I can possibly attend to."

13th: Has a telegram announcing success in a case in Supreme Court. March 9: Has another telegram from Washington announcing his defeat in an attempt to mandamus Judge Emmons. 21st: He attended to a "little matter at police court." April 28: He took preliminary steps for foundation of Social Science Association. May 14: "Spent P. M. at police court prosecuting a chap for assault and battery. Convicted him."

18th: "Persuaded to go to New York to-morrow as delegate to Social Science Association." 22nd: "Made a little speech in Social Science Association. Read a paper of Brockway's on Prison Reform."

June 15: "Argued case of City of Buffalo on appeal before Swayne, and beaten. A judicial outrage; I never want to see him again."

October 5: "Pestered by applicants to go to the Legislature. Hesitated somewhat, but finally made up my mind to refuse."

October 19: "A very annoying day. Lost Rosenfield case under very exasperating circumstances. Overwhelmed with business." 24th: "Expect to be called to Washington." November 1: "I desire here to note that the month of October was the most beautiful I have ever seen in any season or in any climate."

November 8: "Started to Washington to argue case." November 12: "Went immediately to work upon another Washington brief." December 27: "Much pleased with 'Lewis' History of Germany,' a new work just out."

1875, January 1: "Made about fifty calls." 6th: "Dreadfully overrun with work." 11th: "Re-elected director of a street railway company." (Fort Street.) January 12: "Attended stockholders' meeting of American Plate Glass Co. The last year's business in

the Pitts' lumber business shows a loss of $50,000.00." 24th: "Drank my last drop of sparkling wine for many a long day. Am satisfied there is headache in it, and I renounce it." 25th: "Better satisfied than ever of the effects of champagne — a tearing headache all day." 29th: "Smitten with an exquisite ballad — Douglas, Douglas, tender and true."

February 8 and 9: He had a chill. February 10: He sent for a doctor. He writes: "First day's absence from office for sickness since I have been at the Bar." He did not return to his office until the 17th.

March 12 he writes: "Judge Longyear dead. Oh, God, how horrible! Attended Bar meeting in P. M. Completely paralysed, not a stroke of work done. Already plenty of talk of his successor. Offers of friendship sent and freely made."

Judge Longyear died very suddenly in the prime of life, and his death had a most marked effect on Mr. Brown's future. He at once entered on an active canvass for the position of United States District Judge. I remember well when he came to my office, and after asking if I wished the office and receiving a negative answer, asked me to support him. This I earnestly did. I do not remember that there were other candidates. The salary of a district judge was then but $3500.00 per

annum, an amount too small to attract competent lawyers, who were dependent on their earnings.

March 15: "Went to funeral services at Judge Longyear's house. Collecting letters, etc., preparatory to going to Washington." March 16: "Everything in readiness. Took Maynard (then United States District Attorney) and left by evening train, hoping strong and for me tolerably confident." He reached Washington on the 18th, and found his name had already been sent to the Senate. His confirmation followed on the 19th. He took his seat on the Bench soon, and thereafter his diaries were discontinued.

At the time Mr. Brown became District Judge, he had, in conjunction with Mr. Pond, a large and growing practice. He was a successful lawyer, but I do not think that either he or his best friends thought him more deserving of judicial honours than some others. His great distinction was that he had a great ambition to be a judge, and was able to accept the position with the small salary then paid.

The daily social life of Justice Brown after he went on the District Bench probably did not change much. I have no record to mark its incidents.

In 1884 he removed the wooden house in which he had been living to another part of Jefferson Avenue, and

built on the old site a new and fine brick house which is still standing and is No. 712.

One event, well authenticated, shows his courage. Soon after they moved into the brick house on Jefferson Avenue, Mr. and Mrs. Brown were awakened by a masked man standing by Mrs. Brown with a pistol pointed at Mr. Brown and telling them to keep quiet while he proceeded to look for valuables. There chanced to be a pistol in the commode loaded and left there by a young naval officer who had been a visitor. Irritated by the burglar's seizure of a watch, Brown jumped from the bed and took the pistol and fired at the burglar. The fire was returned, but neither one hit, but the burglar speedily fled.

In 1876 Judge Brown published "Brown's Admiralty Reports," which is still in use and is regarded by admiralty lawyers practising on the Great Lakes as an excellent treatise. It contains but one of his opinions. The admiralty business greatly increased in Detroit after Justice Brown went on the Bench. It is said that it was second only to that of New York. He was very prompt in his decisions and was seldom reversed. He displayed a practical acquaintance with details of navigation and methods of business. His Court not only had the business which naturally belonged in Detroit, but also absorbed considerable from other ports. Cases

were frequently brought from other places by consent in order to have the trial before him.

Judge Brown was popular in all the other branches of the law. He presided with dignity and despatch in jury trials. He charged a jury in language they could understand. If they disobeyed his directions he did not hesitate to overrule their verdict. I do not think Detroit has had a better trial judge. Perhaps his greatest fault was an ambition to understand a case and express his opinion too early in the argument. But against this he had no pride of opinion. He would listen to an argument against his decisions with the greatest patience, and was ready to reverse himself if convinced that he had erred. In this respect I never knew his superior and seldom his equal. Not all of Justice Brown's opinions as District Judge were published. Some prior to 1880 are in the Federal cases. From 1880 many were published in the *Federal Reporter*. They are all written in good English. They exhibit a careful study of the authorities, and a judicial mind. He was not so pressed with business but that he could give full consideration in every case. He had the power of deciding after sufficient study. He could make up his mind and adhere to his determination unless influenced by new considerations. He was very conservative, adhering always to the law where he found it settled. He had no

ambition to attract attention by new or extravagant views. He was a patient listener, where a lawyer had anything to say, but was impatient of mere declamation. Though he never hesitated to express his views frankly, he was very affable to all who had business in court, and indeed to all with whom he came in contact.

Justice Brown's appointment to the Supreme Bench was not obtained without considerable effort on his part. One quite formidable opponent was Alfred Russell, the former United States District Attorney, when Brown was his assistant, who had the warm support of one of the then United States senators from Michigan, Mr. McMillan, and of many lawyers in Detroit and in the East. I have heard that one considerable ground for Justice Brown's appointment was his reputation as an admiralty judge and the lack in the Supreme Court of men specially familiar with this branch of the law. In seeking a position on the Supreme Bench, as in other matters, Justice Brown did not hesitate to use all honourable means to attain the object of his ambition.

While a Justice of the Supreme Court he delivered some hundreds of opinions. It is impossible to review them in any permissible space. Nor would such a review be of value. Each case stands on its own merits, and to review it would require one to study all the arguments on both sides, to do what hundreds, perhaps thou-

sands, of lawyers have done at large expense to their clients, and my opinion, if given after exhaustive study, would be of no value. Justice Brown, as a member of the Supreme Court, gave many opinions in admiralty cases. He thought when he went on that Bench that his knowledge of admiralty law was considerable. But he has told me that his fellow judges often disagreed with him in this branch of the law. With his usual modesty, he said that the Court might be right when they rejected his opinions. Discussions of the law are usually of little interest save to lawyers, and to very few of them, save where they are seeking to win a case. There is no doubt that Justice Brown was thought by his associates on the Supreme Bench a good judge, fair-minded, open to conviction, willing to listen to argument, willing to be convinced if he thought he was wrong, affable, having no jealousy of his associates.

One of his associates, Justice Day, writes me thus: "It is hard to comply with your request to portray Judge Brown's weaknesses as well as his strength. In other words, to paint him as Cromwell would have his portrait, wrinkles and all. Judge Brown had very few wrinkles in his character. As a man you were better acquainted with him than I, and well knew his general characteristics. It always seemed to me that Judge Brown had an admirable judicial style, neither too dry

nor too florid, and clearly expressing the thought he intended to convey.

"In the inner work of the Court, Judge Brown was one of the most agreeable of colleagues, and absolutely free from all jealousy and bitterness. He always came to the consultation room acquainted with the cases from careful attention to the arguments and full consideration of the records and briefs. He took a personal part in the discussions at the conference table at all times, earnest in the statement of his views, but at the same time good tempered and courteous in their expression. He was particularly helpful in the Court in patent and admiralty cases, in both of which branches of the law he had experience before coming to Washington. As you know, he wrote a number of leading cases in admiralty and patent law. Until his eyes became very poor towards the last of his service here, he did his full share in the work of the Court and in the writing of opinions, and always participated fully in the consultation of the Court, even after his eyesight was giving him a great deal of trouble. . . . There are some people so unusual and peculiar that one thinks of such characteristics upon the mention of their names. None such occur to me in connection with Judge Brown. He was a capital judge and a genial and lovable companion, free from littleness, rejoicing in the good fortune of his brethren, and at all

times upholding the honour and dignity of the Court."

I have never talked with any lawyer on the Bench or in practice familiar with Justice Brown's opinions, who did not think him a good judge. Was he a great judge, superior to his associates on the Supreme Bench? I doubt it. I do not think he thought himself such. He had a deservedly high opinion of the position of a justice of that Court, and felicitated himself that he had attained it. He spoke to me with the utmost freedom about his associates, always in a kindly manner and generally with praise. He once said to me that, excepting about a dozen of Chief Justice Marshall's opinions, the Court was then doing as good work as did Marshall. I doubted the statement and said that in almost all of the great Chief Justice's opinions, even the least important, there was a power of analysis, a direct statement of the points at issue, and a clear announcement of principles which exceeded the best opinions now given. Justice Brown's opinions will be quoted, as are all those of respected judges, by every lawyer who thinks he can aid his case thereby. Whether they will be quoted by men who study the development of the law, as important landmarks in such development, I cannot say.

Soon after Justice Brown removed to Washington he built a new and fine residence, No. 1720 Sixteenth Street, and resided there until his death.

While District Judge he was made an LL.D. by the University of Michigan, where for a time he lectured on Admiralty Law. The same honour was afterward conferred by his Alma Mater, Yale.

During the Court vacations he travelled a good deal, mainly in Europe. He notes that he went to Europe fourteen times, ten of them while he was on the Supreme Bench. As a traveller he was interested in everything tourists usually wish to see, and especially in becoming acquainted with distinguished men.

In 1901, while abroad and in Italy, Mrs. Brown died. A letter, dated August 2, 1901, gives his reflections on this event.

He was married again in 1904 to Mrs. Josephine Tyler, who was the widow of his cousin, Frederick Halsey Tyler, a young naval officer who died early. After his death, Mrs. Tyler lived much with the Browns, and both were very fond of her. The marriage was a very fortunate one. They lived with the same harmony which had characterised Justice Brown's first marriage. After his marriage Mrs. Brown never separated from her husband. Being much younger and in better health, she waited assiduously on every want. As his eyes failed she read to him. The portrait of the first Mrs. Brown was the most conspicuous object in the family parlour.

Justice Brown once told me that he never had a quarrel with either of his wives.

The circumstances which caused Justice Brown's retirement at the age of seventy are given in his autobiography and his letter to me.

On his retirement, the Bar of the Supreme Court resident in the District of Columbia gave him a public dinner at which were present the President and Vice-President of the United States, many judges of the Supreme Court, cabinet officers and others of public distinction. President Roosevelt made a complimentary speech, to which Justice Brown responded in a carefully prepared and able address. He evidently enjoyed the occasion very much. The addresses and letters of regret were published in a pamphlet beautifully framed and bound.

After that he travelled a good deal, going to Italy, Austria, Turkey, Greece, England and France in 1906, and to Italy, Germany, Holland and England in 1910. When not abroad he went to some part of New England in the summer, and towards the last, South in the late winter and spring. While in Washington he entertained constantly, and of course was often entertained by others. His fondness for society never ceased. He had all his professional life been in the habit of making

public addresses when called on by some public society. He continued the practice after his retirement. I find among his papers a list of his addresses from 1856 to 1912 numbering thirty-six, most of which have been printed in some magazine or pamphlet or newspaper. They all appear instructive to any one interested in the subject discussed.

This list does not include the Fourth of July orations which he delivered in his early career in Michigan. Justice Brown was all his life a reader of many good books. He continued the practice after his retirement, and when his eyes failed was read to by his wife. I have a list in his own hand writing of the books he read and proposed to read. I have also a catalogue of his library of general books. His library was small. It was quite miscellaneous. He had no fads or specialties. Outside of his law books, I do not think him a great reader.

Even in law, I have the impression that he read chiefly to discharge his duty as an advocate or judge, rather than from the love of law as a science. Some of Justice Brown's characteristics are these: He had an ambition to do almost everything those about him were doing, and to do everything in the best possible way. He had a great love of distinction, an interest in all kinds of general knowledge, in history and in science. He was greatly interested in political life, and in public men.

He was a Republican, yet without bigotry. His mind was very active, interested in most everything not requiring expert knowledge. He had good abilities in any subject to which he applied himself, but perhaps no extraordinary capacity in any line. He was absolutely sincere in the expression of every thought, though sometimes hasty. A marked quality was his love of society. Justice Day says in the letter to me: "Judge Brown was, as you know, a sociable man and enjoyed life at the capital, which gave him an opportunity to meet interesting and agreeable people here. He always carefully discharged what he regarded as the social obligations of his position, and his home was one of the most attractive in Washington."

Chauncey M. Depew, Mr. Brown's classmate in college, writes me since his death: "I remember him while as a student, in fact almost better than any other member of the class. He had a most engaging personality which won him universal friendship, both among his classmates and with the faculty. He was an excellent student, but in no sense a grind. While not an athlete, he took the keenest interest in the few sports of that period. His most attractive qualities were on the social side. For three years he roomed across the hall from me in the old North Middle, and therefore I saw him very frequently. In his association with his in-

timates there was a feminine quality which led to his being called Henrietta, though there never was a more robust, courageous and decided man in meeting the problems of life, whether as a student or afterwards when out in the world. The Justice had a grim humour, and I can recall an instance of its exercise. A classmate of ours was always getting into money difficulties and quarrelling on that subject with some member of the class, generally with the one from whom he had received loans and expected more. Brown had several times contributed, and when he received notice from one of our classmates of this man's death and that money was required to pay his hotel bill and funeral expenses, the Justice wrote back: 'To the object of which you speak I gladly contribute, but before sending a check I wish to receive a burial certificate to be sure that he is dead.' At all class meetings coming in decennial year the Justice was a valuable addition. The majority of our class were country clergymen of very limited salaries, and the meetings were apt to be sombre and depressive. Brown, however, was always buoyant, cheerful and reminiscent only on the cheerful things in our college life and the good things in his experience thereafter. In the intimacies of the class banquet he would give incidents happening in the great court, of which he was both a member and an ornament, and also

characteristics of his colleagues, never unkind, which it is a pity could not have been preserved.

"I enjoyed intensely the association during my two terms in the senate with my two classmates, who were members of the Supreme Court, Justice Brown and Justice Brewer. The camaraderie between them was most delightful, and also with them. Brown had been a member for a great many years of the Washington Monument Association. The monument was completed years ago, but every year the Justice had a delightful reunion at his home at which official and social Washington was invited to meet the commissioners."

Justice Brown loved children and young people and attracted them to him. He was fond of the society of intelligent women. He never failed to notice a pretty woman whom he met.

In his morals, at least after he came to Detroit, he seems to have been without reproach. If he ever sowed any wild oats, it was during the first years of his college life. He was careful about money matters, keeping full accounts. He enjoyed saving and making investments, even to the last. I do not think he ever saved money by rejecting any rational enjoyment, or denying any charity which impressed him as a duty. He enjoyed art, but with what intelligence I cannot say. He loved music and used to sing hymns to his own enjoyment.

I should not say that he had a religious nature or was ever much interested in theological questions. His mother was a religious woman, and in youth he went with his parents to an orthodox Congregational church. His father disliked the orthodoxy of his time and the son followed in his footsteps.

While in Detroit Mr. Brown before his marriage usually attended church on Sundays, but at a variety of houses of worship. After his marriage he went with his wife to the Presbyterian church, then having for its pastor the Reverend Duffield, one of the straitest of old school theologians. Mr. Brown was often displeased with his sermons. Later ministers of that church he liked better. After his removal to Washington he was at least a casual church attendant. He never expressed any antagonism to Christianity generally, but was quite tolerant of all sects and of Roman Catholics. He was more of an agnostic than an opponent of religion. He does not seem to have had any pronounced views as to the nature of the Great First Cause or of a future life. He took no great interest in such questions. Brought face to face with death by several severe heart attacks, he contemplated it without fear or much hope.

Justice Brown counted himself a fortunate man. I have known no one who achieved more completely the objects of his ambition.

In the beginning of his will, made in 1910, he says: "Grateful for a life of almost uninterrupted happiness and for the golden mean of neither poverty nor riches." Though sometimes very blue, as his diary shows, he had on the whole a buoyant temperament which made him look on the bright side. But he had many troubles. His first wife was a great invalid, and her death was a crushing sorrow. He suffered most of his life from distressing headaches. Trouble with his eyes began very early. Some years before he died, he lost the sight of one eye, and the vision of the other was greatly impaired. He began to have trouble with his heart in 1896, and thereafter many attacks of this disease, some of them very dangerous. Under the head of palpitations, he made a record of these attacks, their causes and duration, even to the last one beginning August 19 at 2.30 P. M. The number recorded is more than fifty. He died at the Hotel Gramatane, New York, on September 4, 1913, about noon, without suffering. During this last sickness of about two weeks, though realising perfectly his condition, he was bright and cheerful and very patient. He knew every one up to midnight of the 3rd. That day he thanked his doctor and nurse and bade them good-bye.

He is buried by the side of his first wife in Elmwood Cemetery, Detroit. His funeral was from the house he

first built in Detroit — now the residence of Messrs. George B. and Daniel W. Green, cousins of his first wife. Justice Brown's life should be an encouragement to young lawyers. It shows how a man without perhaps extraordinary abilities may attain and honour the highest judicial position by industry, by good character, pleasant manners and some aid from fortune.

CORRESPONDENCE

WASHINGTON, D. C.
May 9, 1899.

DEAR BROTHER KENT:

I have read with great interest your admirable address upon Judge Cooley.

I am a great admirer of Judge Cooley and considered him upon the whole as the brightest legal luminary the State of Michigan has produced. His talks upon Constitutional Limitations is one of the half dozen of the best legal works which this country has produced. He and Judge Dillon were easily the leading juridical writers of our generation, though neither of them attained great eminence as practising lawyers.

But Judge Cooley was guilty of one grave mistake: He overworked his intellect grossly; gave himself no leisure or relaxation, and at our age his career was practically ended. None lamented this more than himself, but it was too late to remedy it. I heard him speak to his students once upon this mistake, which he alluded to as the great error of his life.

I have laid away your address as a model of its kind.

Very truly yours,

H. B. Brown.

Detroit, August 2, 1901.

My dear Kent:

I found your kind and sympathetic letter awaiting me on my arrival at Detroit.

While Mrs. Brown's health was such as to lead her physicians to advise me to take her abroad, I can now see that it was a great mistake, though I doubt whether it shortened her life materially, as her disease was such as must ultimately and inevitably result in her death; and her long invalidism rendered it less a surprise and shock that it would have been had she been taken away in perfect health. At the same time, her very sufferings appealed so strongly to my sympathies that it seems rather to have increased than lessened my grief at her loss. Her death puts an end to nearly forty years of the most unalloyed marital bliss that was ever accorded to man; and, as you say, life will never be to me again what it has been in the past.

It seems to me that it will be impossible for me to return to Washington and to our home there without her presence. I can only console myself with the thought that I exhausted every resource known to science

and medical skill to effect her recovery; but it was in vain. Indeed, her health has been such for the past ten years that I never dared to calculate upon her living from one month to another.

With kind regards to Mrs. Kent, of whom I have been hearing some very pleasant things of late, I am as ever,

Your old and sincere friend,

H. B. Brown.

Washington, D. C.
February 27, 1903.

Dear Brother Kent:

Accept my thanks for a copy of your excellent article upon Law and Justice.

I think there is a tendency on the part of all appellate courts,— and certainly our court here is not free from it,— to find the justice of the case, and if possible to reconcile the law with it. Of course, if the law be plain, we are bound to enforce it for the sake of uniformity, though it may work a hardship in a particular case. There is also a danger, to which you allude on page 349, that while many of the facts are before us, all are not. Indeed it is very difficult to say in a common law case, they are sufficient to enable us to decide the case upon any strained interpretation of the law, though it is different in equity cases which come up on the pleadings

and testimony. While we should never forget the maxim that "Hard cases make bad law," still if we are satisfied we have all the facts before us, it is proper we should consider the equities of the case in applying the law.

In some criminal cases against negroes, coming up from the Southern States, we have adhered to the technicalities of the law so strictly that I fear injustice has been done to the defendant. We have one such case before us now. It has not yet been decided or even voted upon, but if I think of it, I will send you a copy of the opinion. I know nothing more ineradicable than racial antipathy, except, perhaps, national antipathy. My experience has taught me that the natural position of two nations toward each other is one of hostility, to which there are very few exceptions.

In further illustration of what you say, I find that in determining subordinate questions, as for instance whether a particular action against an officer of the Government is an action against the Government or not, or whether a bill in equity will lie instead of an action at law, we are apt to be guided a good deal by the fact whether upon its merits we should reverse or affirm. I have often had occasion to notice that.

I am much grieved to learn of the accident to Pond, which I fear will disable him for life. Pond proves to

be much older than I thought, and I imagine that it will be better for him to retire altogether, and not attempt any further work.

I understand, too, that Meddaugh has had some very unpleasant premonitions of trouble, though I should think a good long vacation would do a good deal for him.

These are all sad tidings, as they lead to unpleasant suggestions with regard to ourselves.

With kind regards to Mrs. Kent, I am,

Very truly yours,

H. B. Brown.

Washington, D.C.,
December 7, 1903.

My dear Kent:

Thank you for your kind and sympathetic letter. The breakdown came without premonition, except a very slight one to which I inadvertently gave no attention. I much fear I shall lose my sight completely, but I am taking encouragement from the fact that good work has been done by blind men, and that some distinguished judges have been forced to rely upon the sight of others to prepare their opinions. Of course, it is a terrible affliction, but if I can avoid a nervous collapse for the next sixty or ninety days I hope I may succeed in recon-

ciling myself to the situation, and perhaps take some further pleasure out of life. Of course, I would resign if I could do so and draw my pay; but after nearly thirty years' service upon the Bench I do not feel called upon to do so when I am within a little over two years of completing my term.

I heard from Mrs. Meddaugh the other day with regard to her husband's condition, which I fear is about as bad as mine. My general health has never been better than it has been this fall, but of course that may go with a fatal disease of the eye.

Very truly yours,
H. B. Brown,
per F. E. C.

Washington, D. C.,
February 20, 1908.

Dear Brother Kent:

Your interesting letter broke a long silence,— so long, indeed, that I should not dare even to guess when we last exchanged letters. The truth is, my group of friends in Detroit is thinning out so rapidly that I am always glad to hear from one of them. I am beginning to feel almost a stranger there.

I am glad you are pleased with the banquet pamphlet. It was really a superb affair, and made the evening the

happiest of my life. Indeed, I was almost paralysed with the splendour of the table as I entered the room. It was all so much beyond my anticipation.

I do not think we shall disagree with regard to the subject of judicial legislation. Where the law has not yet been construed any interpretation adopted by the Supreme Court must be in the nature of legislation, as it must be determined not only by the language of the law, but by the circumstances of the times and the necessity of the case. But I am firmly opposed to judicial legislation where the law has been settled by a series of adjudications, and for that reason dissented from the opinion of the Court in the Income Tax and the Haddock divorce cases.

My general health has never been better, though I have lost the sight of one eye entirely and partially that of the other. I never have enjoyed life more, and I think the stories that are often heard about men collapsing when they leave the Bench is all nonsense. Of the four men of our Court who lost their minds, all of them lost them while they were still upon the Bench, while the four who left the Bench in sound condition, not one of them showed symptoms of mental weakness until their deaths. There are now three competent to retire, but no one will do so. Brother Brewer always declared that he would leave the Bench at seventy, but

he pretends now that he is afraid that he will lose his mind if he does so. But I think there is a much better reason than that for his remaining on the Bench. No one of them likes to take a back seat. Besides that, the wives cut an important figure, and, of course, they are always opposed to it. I think their fears are groundless, but I do not like to express to them my opinion upon the subject of retirement.

I may say that time does not hang heavily on my hands; that I have not been busier for fifteen years, though, of course, I do not work hard. A magazine I send you to-day will show you how I spend my mornings; my afternoons take care of themselves. The subject of the article is one that has received the attention of the Courts in a good many cases, but not of the law writers. I have endeavoured to treat automobiles fairly, but if you should read between the lines that I hate them, I should not quarrel with you. If the question were left to me, I think I should vote that a comfortable old age is the happiest period of one's life.

Yes, I have understood that Quinby is in failing health through feebleness of the heart. This is the weak link in my chain of vital armour, and I should not be surprised at anything. Of Quinby I have always had a high opinion.

I notice your comments upon the course of the Presi-

dent, and agree with you, at least partially. I think he has lost popularity during the past year among the better classes by his impetuous temper, his intolerance of criticism, and needless quarrels and his seemingly uncontrollable fondness for letter-writing and getting into print. He has too little respect for the opinions of others, and his popularity has had the effect of making him think that he is infallible. But with all this, he will go on record as the first president who has dared to attack corruption in high places, corporate abuses of various kinds, and frauds in obtaining possession of public lands. He is full of pluck and energy, and absolutely without fear. I think his letter to Admiral Bronson was a mistake, and that his last message, though abounding in good suggestions, indulged too much in sermonising and defences of assaults upon his administration. *That* he had better have left to his friends. While the very rich hate him beyond expression, the great mass of the people are with him, and I still consider him, with all his weaknesses, one of the most valuable presidents we have ever had. I think he is largely the cause of the present financial stringency, in which I myself have lost several thousand dollars, but I do not regard it at all as an unmitigated evil. I think it will lead, if to nothing else, to an improvement in the management of corporations and to an improved tone in our

business life. From having been almost an extreme conservative all my life, I fear that I am getting to be something of a radical in my old age.

I am glad to hear that Mrs. Kent is well. Please give her my kind regards.

I sincerely hope that Taft will be nominated and elected. He is a splendid fellow, very popular, and worthy of his popularity. Of course, I take no part in politics.

Very truly your attached friend,

H. B. Brown.

Washington, D. C.,
March 26, 1908.

My dear Kent:

Have just received your letter and in reply would say that if we cannot welcome you here, we shall be very glad to meet you in Charlestown the week of April 6. I am a delegate from Connecticut to a triennial meeting of the Society of the Cincinnati to be held in Charlestown, April 8, 9 and 10.

We expect to reach there Tuesday, the 7th, and put up at the St. John Hotel, where the secretary has promised to engage rooms for us. If you can meet us there, I would recommend your writing for rooms, as there will be a good many people there stopping on their way

north. The convention will be in session three days, and there is plenty thereabouts to amuse one for that time.

It looks now as if Taft would be nominated, but I have grave doubts about his election, though some of Bryan's recent utterances have shaken the little faith I had in him.

Very truly yours,
H. B. Brown.

The recent railroad rate regulation has received a stunning blow from the Supreme Court.

Essex County, N. Y.,
August 10, 1908.

My dear Kent:

I have been waiting for a good chance to tell you that I have already acted upon your intimation and written a biographical sketch of myself up to the time I went upon the Federal Bench. It is more befitting that my doings since that time should be written by another than myself; — thus distinguishing between my private life and that which by courtesy may be termed public. It is written in the first person, but may be readily turned into the third person by the memorialist. I have asked my wife to send it to you, if you survive me — if not, then to my executor, who will be instructed to pay all

expenses of publication. It is a simple affair, but will be of assistance to any one who may feel sufficient interest to write a brief memorial. I am not ambitious for a regular biography.

By the way, some one (perhaps you) told me you were writing or had written a biographical sketch of Lothrop. I hope you will send me a copy, as I was a great admirer of his.

I have just read your criticism of Brown's edition of "Austin's Theory of Law," and while I am not sufficiently acquainted with Austin to act as judge, I quite agree with you in your defence of Mr. Carter's address upon judge-made law. In declaring the law where there are no precedents, they necessarily make it. I had occasion to allude to this subject in my address at the Bar dinner.

I was also much interested in your article upon Legal Ethics, concerning which it seems to me there are two standards, (1) as between the lawyer and his client, where the utmost frankness and fidelity are required, and (2) as between counsel and the Court and opposite counsel, where everything is permitted that does not involve trickery or an attempt to deceive.

I am quite pleased with Taft's prospects. Nothing but the financial situation and the ugly fight that Foraker may make in Ohio can defeat him. Bryan seems

to have no fixed principles and has become a political bore. The only proposition he ever really stood for was the silver standard, which every one now admits was a mistake, a delusion and a snare.

I don't wonder the betting is all in favour of Taft. I never really myself for a moment doubted the sincerity of Roosevelt's original withdrawal, and am glad that he adhered to it, as I fear he would have been beaten.

We are visiting the Adirondacks for a few days.

With kind regards to Mrs. Kent, believe me,

Sincerely yours,

H. B. Brown.

Always address me at Washington.

Washington, D. C.,
May 28, '09.

My dear Kent:

I have just resurrected your last letters of September 15 and October 29, 1908, which I ought to have acknowledged long ago, but laid aside for a more convenient season which has just arrived. Since then much has taken place — mostly of an agreeable character.

Roosevelt, who spent the last two years of his incumbency in pulling down the great reputation he made during the first six years, has disappeared in the wilds

of Africa, and the whole souled and generous Taft reigns in his stead. At the last the papers spoke quite kindly of Roosevelt, who will long be remembered for the great good he did, while his eccentricities will gradually be forgotten. I still consider him one of our greatest presidents.

Taft has made a fine start and bids fair to become very popular. I consider him an ideal man for the presidency, but who knows what a year may bring forth? The Senate is trying hard to *find* out how *not* to do it, and will probably do nothing toward a substantial revision of the tariff. Truth is, this country is given over to protection, and the Dems are about as bad as the Reps. The next House is quite likely to be Democratic, and I should not regret it. The fact is, the consumer is *nobody.*

I have taken Arthur Parker's house in Detroit for the summer, though I can't take possession until July 10, as I am booked to read a paper before the Maryland Bar Association on the 7th. I fear I shall miss you and Pond, who will probably be off on your vacations by that time. I have not visited Detroit, except for a few days, for nearly twenty years, and want to spend a season there. I am really very fond of the place, and don't want to lose touch with it entirely, though most of my old friends are in Elmwood. I understand you spent some

time in Bermuda this spring, and I'd like to know how you fancied it.

Glad you met the Harlans at Murray Bay. They are an interesting, popular, and distinguished looking family. The judge is getting pretty old (seventy-six), but has no intention of retiring. Strange how they all dislike it. Chief Judge Cullen has been here submitting to an operation upon his eyes. I regard him as an unusually fine character. I met Governor Hughes several times last winter, and was much surprised by his sterling character. He seems to be as much loved by the people as he is hated by the politicians. Wish we had more such men in public life.

I think we are soon coming face to face with a new political problem in the possible alliance with England as against Germany. The English are getting badly scared at Germany's naval preparations, and are looking about for friends. I think it would be a terrible thing for us if the Kaiser succeeded in wresting from her the sovereignty of the seas; this I really do not think there is much danger of. Do not believe we are called upon to act at present, but if a war should break out and an invasion of England be seriously threatened, our action would become of the utmost importance. The difficulty with the English is that they have not the capacity for making friends, but are adept in the gentle art of mak-

ing enemies. The humblest of us hate to be patronised.

Kirchner spent an evening with us a few weeks ago, and we enjoyed a very pleasant chat over Detroit people.

I hope you are enjoying your years as well as I am. I have something to do every day, and never allow myself to be bored with anything. If threatened with ennui I go to the Club and generally find intellectual companionship.

With kind regards to Mrs. Kent, who left behind her here a most pleasant impression, believe me,

Your attached friend,

H. B. Brown.

Washington, D. C.,
June 10, '09.

My dear Kent:

Thank you for the season ticket to the "Old Club." Never heard of it before under that name, but it seems to be at the Flats, which are always pleasant in summer.

Shall take great pleasure in revisiting them. The doctor has been cutting me out of so many of the dietary pleasures of life of late, that I am beginning to ask myself whether, *after* all, life is worth the living. But, thank heaven, he has not placed a ban upon whitefish.

Loyally yours,

H. B. Brown.

I read your admirable article upon Lothrop the other day. It is a most worthy tribute to a great man, who ought really to have been a *greater* in the estimation of the world.

WASHINGTON, D. C.,
January 21, '10.

DEAR BROTHER KENT:

I see our old friend Pond has finally paid the debt of nature, and from what I have learned of his condition, I imagine that death could not have been an unwelcome visitor. I hope you will write a memorial of him and send me a copy, as he was certainly an eminent lawyer, and his offhand opinions were as good as those of any man I ever knew. I think he would make a good subject for a biographical sketch.

I read your criticism of "President Hadley's Constitutional Views," in which you seem to have made a good point against him, although his error is a natural one for a layman to make.

Hannis Taylor, a lawyer of this city, who is unearthing some new propositions which no one has ever heard of before, has recently discovered that Congress exceeded its power in retroceding to Virginia that part of the District lying south of the Potomac upon the ground that the original cession constituted a tripartite

contract between the United States, Maryland and Virginia which could not be broken by two of the parties. Guess the Supreme Court will make short work of his proposition after sixty years of acquiescence.

Hope you are as well and contented as I am. Have never enjoyed life more than this winter. I am "out" somewhere every day, participating in much of the gaiety with a consciousness that I am leaving no work undone to worry me. In fact I don't allow anything to worry me.

Are you going South this winter? Should love to have you give us another call.

With kind regards to Mrs. Kent, I am,

Sincerely yours,

H. B. Brown.

Washington, D. C.,
October 30, '10.

Dear Brother Kent:

I was very glad to receive your letter — indeed, was going to write you myself as soon as I received a certain paper, which I am going to send you when I get it.

When you were in North Carolina last spring, I was probably in Augusta, Georgia, a delightful place where I met several Detroit people, including Mrs. Governor Baldwin and the Hutchings. It is upon these little

outings I depend for much of the health and happiness I now enjoy.

Last summer we spent in Europe — landing at Genoa — proceeding thence by rail and private carriage over the Alps and northward to The Hague, where I spent a few days with the Tribunal, and enjoyed its hospitality. We spent a month travelling in England, largely by carriage, which is our favourite method of locomotion. When I say that during the summer we slept at forty different hotels, you can judge that our halts were not long.

I returned home with three pretty distinct impressions. (1) That the expense of living in Europe is from one-half to two-thirds of what it is at home, except perhaps in London and Paris. This is largely the cause of the immense exodus to Europe every year.

(2) That the Kaiser is a constant menace to the peace of the world, and that he would like to be a mediæval despot if he dared. He is thought by some of his subjects to be unbalanced mentally. It is not so much what he does that causes fear, as what he is constantly preparing to do, and compelling other nations to do.

(3) That The Hague Tribunal has practically insured a continued peace between England and America, though with little effect upon the politics of Europe.

Don't think it has saved any country a dollar of expense in preparing for war.

The decision in the fisheries case was most fortunate, as both parties claim to be victorious. The Court was a very handsome and imposing one to look upon, and the members impressed one with their dignity.

At home politics seem to me in a very confused condition, and I should not be surprised if there were a Democratic landslide next week, nor should I regret it much. I am out of all patience with Roosevelt, who is evidently talking himself to death. He is suffering the usual effects of flattery and adulation. And can you wonder at it? Whitelaw Reid told me there were three kings in his house at one time to call on him. Nothing like it since Napoleon's day, and I fear he may yet find his St. Helena.

Per contra, Taft seems to me to grow finer every day, and I hope for his re-election. Don't think there is any danger of Roosevelt's renomination. He should have kept quiet for a year or two at least.

I have read a few short articles upon psychical researches, but have not taken up the books you spoke of, though I intend to do so yet. I am busier, perhaps, than you think, writing something every day, though to little purpose. I do not desire any continuous employment, and am as happy as a man can be at my age. I

know that my work is done, that I have lost all ambition and am living only in the present and the past. I am as fond of society and of dinners as ever, and occasionally appear at a public banquet. I made a specialty last summer of seeing something of the Pilgrim country, visiting Scrooby, Boston and Leyden as preliminary to the Mayflower banquet. I might easily rust out, but I will not permit myself to do so, if I can avoid it. I have company at my house all the time (four guests at present) to keep me cheerful, and if you go South next winter, I want you to repeat your visit here, if I can make things "jibe" to suit me. My first guest was a Scottish M.P., whose peculiarities amused us much. He was not above the average Congressman in appearance and conduct.

May you live many years yet, and happily. I have a selfish interest in your surviving me, as I want you to write a memorial which I have already skeletonised for your benefit.

With kind regards to Mrs. Kent, I am still

Your loyal old friend,

H. B. Brown.

P. S. I am afraid that I am somewhat of an epicurean — getting all the pleasure I can out of life, and (I hope) contributing a little something to the pleasure

of others. Well! it will soon be over, for the night cometh when no man can work.

WASHINGTON, D.C.,
January 1, 1912.

DEAR BROTHER KENT:

I have delayed answering your letters in order to procure and send you the *Congressional Record* containing the debate upon the Abrogation of the Russian Treaty,— which I have done to-day under separate cover.

In my former letter I gave you my reasons for thinking that the conditions annexed to Section I applied only to the laws and ordinances prevailing in Russia, which I think is emphasised by the fact of the particular mention of the regulations in force concerning commerce. It seems through the debates that the first Section is the only one considered to be in dispute. (See Senator Smith, 476.)

I confess I had overlooked the last clause of Article X.

This Article deals with the distribution of personal and real property bequeathed or conveyed to American citizens, and provides that they shall be entitled to the same upon payment of legal dues. The final sentence is that "this Article"— not this Treaty — shall not derogate in any manner from the force of laws already published, etc., to prevent the emigration of his subjects. In view of the fact that the laws already prohibited the

emigration of Russian subjects, it seems to me that it was intended to provide by this sentence that, in case the Government should see fit to sequestrate the estates of emigrants, this sequestration should override as much of the Article as provided for the distribution of estates to American citizens.

Both Senators Root and Lodge regard this as recognising the doctrine of indefeasible allegiance, and to constitute another ground for the abrogation of the Treaty as obsolete, in view of our laws. This may be so, but I do not think the final clause of this Article should be construed as limiting the express agreement contained in the first Article providing for the admission of American citizens.

Neither of the Senators who spoke on the subject attempted to connect the two Articles in any way, or to insist that the final sentence of Article X limited the right of American citizens to enter under Article I. If it did, then it would be possible for Russia to forbid the reentrance of all Russians, Jews or Christians who had become naturalised under our laws. This would be a total refusal to recognise our power to naturalise Russian subjects.

My own view is expressed, as I stated in my former letter, in two articles from this week's *Outlook*, which I enclose, both of which assume that there is a debatable

question under the Treaty which is clearly "justiciable" by The Hague Tribunal. It seems to me — and such, I understand from one of your articles is the opinion of Andrew White, as it certainly is of Roosevelt and of the *Outlook* — that the dignified way would have been to submit the case to The Hague Tribunal, obtain their decision on it, and I now think it would have been in our favour — leaving the defeated party to terminate the Treaty by giving notice. We are now terminating it without any assurance that it has been violated. Considering that Russia and ourselves were the principal signatories and originators of The Hague Tribunal, it does not seem to me to look well to take this step without submitting the matter first to the tribunal we have done so much to establish.

All of this tends to reinforce my original proposition — that arbitration treaties are of little value when the feelings of either side become enlisted in an international question. To insist upon the adoption of the two treaties with Great Britain and France without amendment, and in the teeth of this notice, looks to me, as Roosevelt says, very much like hypocrisy.

To adopt these treaties would be yielding to current popular sentiment, but as all wars involve the repudiation of treaty obligations, I see no reason why an arbitration treaty may not be repudiated as well as any other.

I hope you will let me know when you intend to pass through Washington, as I want to arrange to have a visit from you here, if possible. I did intend to go South, but hardly think that I shall do so, though I get a little tired of the frivolities of society here.

With kind regard to Mrs. Kent, and wishes for a happy New Year, I am

Your old friend,

H. B. B.

Trouble with Sulzer is that he represents one of the slum districts of New York City and relies largely on Jewish votes.

WASHINGTON, D. C.,
February 29, 1912.

MY DEAR KENT:

Just as I was upon the point of answering your letter of January 25 from Atlantic City, I was suddenly knocked out by an attack of "edema of the lungs" (sounds well, doesn't it?), and for three or four days was in great danger, although the doctors did not tell me so. With a consulting doctor from Baltimore, two trained nurses, and a cylinder of oxygen, things looked very squally for a few days.

At present I am officially *well* — no pain, no suffering, no new or acute disease — but practically a wreck — too

weak to walk and too inert to be much interested in anything. I read a little, drive a little, sleep a good deal, but make very little headway. Much as I have enjoyed life the past few years, I surrender it without reluctance, the thread by which we hold it after seventy-five becomes so very slender. I am thinking of going South as soon as I can get away, but not yet; too weak — too helpless.

I am writing one other article which I will send you if I ever live to finish it. You will see that I am somewhat depressed to-day, but by no means unhappy. I may yet live to ride down Pennsylvania Avenue in the Roosevelt band wagon.

Your loyal old friend,
H. B. B.

Camden, S. C.,
March 22, 1912.

My dear Kent:

I have purposely delayed answering your letter of March 2 until I could come South, where I was sure of plenty of leisure. My last birthday was the first within my memory where I did not note my excellent health, but my seventy-sixth was too much for me. I am slowly recuperating and have regained my appetite, but am still weak and inert. I feel that I have grown old (which was quite unnecessary), and am more de-

crepit. I thought a month ago I was going to give you a job "right off," but I may hold on a little yet. One lesson I have learned from this experience — never to spend another winter north of the Potomac. I doubt whether I shall spend another anywhere.

After much doubt and hesitation we concluded to come here, and are much pleased with the experiment. Camden is a high class old Southern village in the usual state of unthrift but with some fine old mansions. The hotel, originally a planter's home, is excellent, and we have rooms directly over the front, and overlooking a fine old garden with a pine forest near by for strolling purposes. Among the guests are the Fletchers, Mr. and Mrs. Williams, Mrs. Maynard, Mrs. Freer, Mr. Atwater, all of which makes it agreeable for me. If you are ever in search of an "intermediate" resort, I recommend it highly. The house is full, but the end of the season is near.

The weather, which changed the very day we came down, could not be finer. Garden full of flowers and singing birds and much to delight the eye. We hope to remain here until April 7, and then return home. My wife did receive your letter, but, as I was well enough, handed it to me and I did not notice it was addressed to her.

I fully sympathise with your remarks about death,

which, if one has lived long enough to have honourably completed his work, I consider as great a blessing as life. Only think if the power to die were completely suspended for only a decade. The world would be filled with a lot of incompetent, useless people whom the next generation would be obliged to support. They would probably do as the savages used to — kill us all. Death, which seems so horrible at twenty-five, loses all its terrors at seventy-five, and ought to be welcomed rather than feared. And these last years can be made so interesting picking up and disposing of the tangled threads of a lifetime.

I am still interested in reading about politics, though, of course, without mingling in its activities. I feel positively humiliated at the way Roosevelt is conducting himself. It illustrates how impossible it is for a man who has once been a popular idol to content himself with a private life. His boom is collapsing even quicker than I expected. His only salvation now is to endorse Taft and take the stump himself; it is not too late for that. His defeat in North Dakota this week by such a man as La Follette must have been especially mortifying.

I am still strong in my confidence in Taft, though I regret the modern habit of presidents taking the stump in their own behalf. It lacks dignity, and their place of duty is Washington.

I read your paper on Direct Government and agree to

its main propositions, but the remedy you suggest on page 9 for getting rid of corrupt judges by a commission of experts strikes me as cumbersome as impeachment. I am myself a believer in the Massachusetts doctrine of removal by the Governor upon the address of both Houses of the Legislature. This I believe has always worked well, and while in practice it may be abused, it has never been so. A judge who cannot command a majority of at least one House ought to be removed on general principles. I take it no one would be removed without some chance of being heard, though no formal provision is made.

I am curious to know where you will spend the summer, and will try to see you. I have written one paper myself this season which will probably be out early in the summer. Give kind regards to Mrs. Kent.

Well, good-bye, old boy. May we both of us find something to console and amuse us in the evening of our days, and when the inevitable guest arrives I hope we may be able to meet him with cheerful countenance, and as he knocks at the door for admission to reply as did Colonel Newcomb, "Adsum."

Your loyal and affectionate old friend,

H. B. B.

CAMDEN, S. C.,
April 2, '12.

MY DEAR KENT:

Thank you for your letter. I learned that you were at Tryon within an hour or two after I had posted my letter, but too late to recall it. I knew it would be forwarded to you. I fear the scheme of dropping on our way home to visit Tryon is impracticable, as I have already bought and paid for my tickets, and engaged space in the sleeper for next Sunday night.

Besides, while we are not far apart as the crow flies, we are quite distant as man travels. There are changes to be made, and delays and discomforts to be encountered, that would consume an entire day. I have found travelling in the South most annoying and trains never on time.

Our prospect of meeting at Seal Harbor next summer seems much brighter. I am planning to spend a part of the season somewhere on Mount Desert Island, and if when your plans are perfected you will let me know, I think I can arrange to meet you. I have two or three places there in contemplation.

I see Roosevelt has given up his recall of judges and now comes out for the Massachusetts plan of removal by address. As I wrote you, I believe this is sound, and

have long advocated it. But his campaign seems to be degenerating into mere bluster.

I fear the Senate has made a grave political mistake in failing to oust Lorimer and Stephenson from their seats. If the people become satisfied not only that senators are corruptly elected, but that the senators will stand in together to keep them there, it will give a tremendous impetus to the movement for popular election. I confess it has shaken me considerably. I regard the Senate as now on trial itself. I am afraid it has blundered.

With kind regards to Mrs. Kent,

Your loyal friend,

H. B. Brown.

Washington, D. C.,
May 20, '12.

Hello! Hello! Here I have been bracing myself for a fortnight to write you, when your letter was handed in this morning. And now about our summer plans.

We intend to leave here June 17, spend a day in New Haven attending our last class meeting, then cruise about the neighbourhood until after July 4, when we shall go up to the Samoset at Rockland for a week or two, when we thought to meet you at Seal Harbor, where the widows of Bishop MacKay Smith and Justice Matthews

are also going, but that second flight of stairs looks as formidable to me as it does to Mrs. Kent.

So our plans at present do not reach beyond the Samoset, where we'd be very glad to meet you. I don't imagine it is any more fashionable there than at other first class hotels on the coast, not so much so as at Bar Harbor. I never did fancy roughing it much, and in my old age have got to be somewhat of a Sybarite.

Am going to postpone discussing the political situation till after the Ohio election to-morrow.

Wednesday.

Well, I'm afraid the election in Ohio eliminates Taft as a presidential candidate. A man who can't carry his own State could hardly be considered an available man. I'm very, very sorry, because Taft is really a splendid fellow. How glad he'd be to take a seat on the Supreme Bench.

Roosevelt, whose boom I thought had collapsed, is certainly a marvellous politician. His victory in Illinois was a revolution for him, and I have ceased to predict.

But, after all, what boots it to us? I have no fear for the safety of the country even with T. R. or Bryan. We are with our modern nostrums passing through the chicken-pox, measles, and scarlet fever stage, and will ultimately emerge into a healthy manhood. I am no

pessimist and have great confidence in the ultimate good sense of the people. The acquittal of Lorimer will probably result in the election of senators by the people and a lowering of senatorial standards in favour of the man with the loud voice, full purse and empty head. But we can stand it.

Kind regards to Mrs. Kent, and hope she will find satisfactory quarters. Your loyal friend,

H. B. Brown.

Washington, D. C.,
October 5, '12.

My dear Kent:

Apropos of our talk about woman suffrage in New Jersey, I send you a copy of my paper in which you will find a sentence on the subject on page 14.

It seems that in 1776 a constitution was adopted conferring the right to vote upon "all inhabitants" possessing certain property qualifications (very likely an inadvertence). At first women did not vote, but in 1797 a bill was passed in which the right to vote was given at the precinct in which "he or she" resided. Under this, seventy-five women voted for members of the Legislature at Elizabeth, at a close election, and at the presidential election in 1800 women voted generally through the State.

Finally, at a special election to locate a county seat in 1806, so many fraudulent female votes were cast that the Legislature in 1807 not only set aside the election, but passed an act declaring the true sense and meaning of the Constitution, to be that suffrage was confined "to free white male citizens." This was afterwards incorporated in the Constitution in 1844.

In defence of the 1807 Act, which would probably be treated now as unconstitutional, it may be said that Marbury vs. Madison had been only recently decided, and that it was still thought that the Legislature could interpret the Constitution as well as the Courts. Its action, however, does not interfere with your idea that the people never give up a power they have once possessed. But how does this tally with the short ballot, and the government of the cities by commissions, where all the executive officers are appointed.

My facts about suffrage are gathered from an elaborate "History of Woman's Suffrage," in two volumes, by Susan B. Anthony. Vol. 1, page 447.

If you want to learn what a set of corrupt scoundrels the Federal judges are, and have ever been, read Gustavus Myers' "History of the Supreme Court" from a socialist point of view. He has not a good word for one of us. He is universal and unsparing in his denuncia-

tions. It is really quite amusing, though he overshoots his mark.

On leaving the Samoset we brought up at the Gramatan at Bronxville, near New York, and found it delightful and very reasonable in prices. We also spent a fortnight in Atlantic City before returning home. My health has been steadily improving, and I am better than for a year past. Shall try Watkins again next summer if I live.

I heard Governor Wilson make a non-political speech at Atlantic City and was charmed with him. I have no fear of him as president, though my preference is still for Taft. Roosevelt's chances are steadily declining, if he ever had any.

I think Taft is clearly right in his construction of the Canal treaty, and the English papers are gradually, though most reluctantly, coming around to his view. It's an old principle of the common law that no one can squeal until he is hurt. 179 U. S. 405. As England can't engage in our coasting trade she has no right to complain.

With kind regards to Mrs. Kent, believe me,

Your older than ever friend,

H. B. Brown.

WASHINGTON, D. C.,
January 4, 1913.

MY DEAR KENT:

I was very glad to receive your letter of December 27, though I really don't know on which side lay the obligation. I presume you are right, as I don't recollect writing you since the election, which I fancy was no surprise to either of us. I am myself quite content, as I think in a free government there ought to be occasionally a change of leadership.

We are intending to leave here January 12 for Miami, Florida, to stay until after inauguration. You see how completely I am getting "out of it," after being in it for over twenty years. There is much humbug and much "climbing" in Washington society, but withal a substrata of solid good sense. People are generally taken for what they appear to be — not for what they were at home. A good tailor accepts nobody's previous measurement. Of course, there is much bridge playing, etc., among the smart set, whose doings do not interest us.

Our mutual friend Addie Mitchell dined with us on Monday.

This leads me to congratulate you on the defeat of woman suffrage. This seems to me much more important than that the result of the election, as it would be

impossible to disestablish it, once it became a political issue. I admired Senator Bailey's recent speech in denunciation of Oregonism, and even more Senator Lodge's on the Constitution. On the whole we'll get along for another four years, and that's quite enough for me.

My own health is fair, though I am feeling the weakness of age and the probability of losing my sight, but my spirits are unbroken, and I hope not to die a-whimpering at my fate.

How wise in Taft (God bless him) to take the Yale professorship! It leaves all possibilities before him, and little chance to make enemies.

Continue to address me here, as your letters, always welcome, will be forwarded. I will at least send you a card from Miami on arriving.

Well, good-bye, old boy. With the best of luck, as long a life as you can enjoy, and my respectful salutations to Mrs. Kent.

Your old pal,
H. B. B.

Sunday.

I think a great whole-souled man spoke in Taft's speech advocating the arbitration of the Canal question last night.

Miami, Florida,
January 18, 1913.

My dear Kent:

Here we are in our winter quarters, for a month at least — possibly more. A delightful spot — temperature seventy to eighty — summer clothing — excellent hotel — nice people — pleasant driving and boating — a really Northern town in the most tropical of Southern States. Fresh ripe, untravelled strawberries grown in the suburbs of the city — none of your berries picked green and ripened by 1000 miles of carriage in refrigerator cars — but the real thing, and never a suspicion of unripeness. Can't I make your mouth water?

Bound to say prices are high. A hundred and five dollars per week for two people and bath, but the season is very short — not over six weeks — and prices *must* be high to get a return. City has 13,000 people and is a paradise. Guests largely young men of our age and a sprinkling of old tabbies. Men look very comfortable, but not fashionable, like Palm Beach.

I think the action of the Senate in the Archbald case was most fortunate. I know little of the merits, but the result shows that impeachment is still a live remedy, and that it will be administered without fear or favour. It disposed of the objection that it had become obsolete, or too cumbersome for practical purposes. It is valuable

too as showing that almost anything that shows a voluntary judicial unfitness may be treated as an impeachable "misdemeanour." I consider the precedent as of great value to the public, and to the judiciary. It will probably put a stop to judges "dickering" with cases pending before them. I look for a big row in the Democratic camp pretty soon after assembling of Congress. The chiefs will try to overawe Wilson, and will find they have their match. It promises to be an interesting session. I want to see the Democratic vote on a bill to abolish the tariff on cotton, tobacco, and citrus fruits.

Suppose you must be leaving home pretty soon. Where shall you bring up? This will be delightful for the next month. Hope you will try it. I'm wearing a white flannel suit to dinner. Geo. L. Burrows of Saginaw is the only Michigan man.

Miami, Florida,
February 13, 1913.

My dear Kent:

I think the post office must be up to its old tricks, as your letter must have crossed a newspaper clipping I sent you last Sunday to show you that I am on deck still, though somewhat the worse for wear. Truth is, I have picked up quite a little in this delightful climate, where one can sit outdoors till midnight in white flannels

and then go to bed with nothing but a sheet over you. Thermometer has gauged from 70° to 82° almost every day. Burrows of Saginaw is here, and the Bairds of Detroit.

I am so well myself that I am almost superstitious about confessing it, for fear of a disaster. But I agree with you that March would probably be too warm here and that St. Augustine would be safer. We are going up to Palm Beach next Monday, the 16th, for a fortnight, and if you could be at St. Augustine as early as the 5th or 6th, I would meet you there at your hotel and spend a day or two before going on to Jekyl Island, where we are thinking of making a short stay before going home.

This old hotel is full of old men doing exactly what I am doing — not a blessed thing, and getting all the comfort out of life we can, with the help of the most delicious grape fruit and strawberries ever tasted, while we hear of zero weather in Michigan and men being frozen to death. I do hope you will visit Miami some time. Southern Florida is a piece of the tropics which the good Lord has kindly injected into our territory. I regard as tropical any place to which the palm is indigenous.

Glad Mrs. Kent is taking a hand among the antis. They must bestir themselves or the suffragettes will sweep the weak-kneed off their feet. I regard it as a serious matter, but fire must be fought with fire.

I have been offered $100 for my Scot. Dillon, but I make the Frenchman's reply to all: "If it's worth that to you, it's worth as much to me." I'll neither buy nor sell.

I'm glad they passed the income tax amendment, though I don't believe it was necessary, as the Court would now dispose of the Pollock case in short order. Bryan seemed much pleased at my allusion to it — not so much so at my denunciation of the recall of judges.

I am inclined to think the popular election of senators will result in an increase of rich men instead of a diminution, because they own or control the papers, and the papers *own* us. Most of 'em are purchaseable. I don't fear the democratization of the Senate so long as they have dollars to jingle in their pockets. I agree most people are fools.

With kind regards and cheers for Mrs. Kent, believe me still,

Your venerable old pal,
H. B. B.

WASHINGTON, D. C.,
April 17, '13.

MY DEAR KENT:

In the first place I want to congratulate you and Mrs. Kent upon the stunning blow you administered to the

suffragettes at the last election — a blow which ought to keep them quiet for a year or two at least. I fancy the antis of the Pankhurst crowd in England are not only disgusted with the people here, but "queered" the cause here.

I was a little afraid of the result, but the size of the majority staggered me. The suffragettes here, who had come to besiege Congress, were so confident that they had engaged guns and rockets, and, of course, there is much wailing and lamentation. Sorry to see most of the D. A. R. delegates from Detroit are suffragettes. While I am still opposed to suffrage, I have ceased to fear it. Though it has accomplished nothing, it has really done no harm. The difficulty is that when woman wants anything, she wants it very badly — she wants it right off, and she will stand at nothing short of murder to get it — but when obtained she begins to lose all interest in it. This has been the history of suffrage, both here and abroad. Apropos of this I send you one or two clippings which you need not return.

If they should succeed in winning suffrage, I should fear that ultimately they might attack our domestic life, and go in for trial marriages, divorces at will, and perhaps free love, though at present they would repudiate it.

I have been much amused, and somewhat alarmed, at the first fruits of the popular election of senators, viz.:

a conspiracy to get Root, confessedly our ablest senator, defeated, and Hearst installed in his place. Hearst has the support of Jno. R. McLean (another of the same ilk and worth more than Hearst), who publishes laudatory editorials in the *Post,* and sets up his paper as the Hearst organ. As I wrote you, this amendment is bound to create conspiracies between the bosses and the newspaper to bamboozle the public, who are very gullible. This is reform with a vengeance! From the earliest times the people have been used as tools to establish the worst of despotisms.

I have taken quite a fancy to President Wilson, who certainly means well, and made quite a popular hit in delivering his message orally. But he has a world of trouble ahead to get his tariff through. . . .

I don't altogether sympathise with this howl against the Vice-President, as I have always believed that the State had the inherent right to regulate the descent of property, and that in certain very rare cases of multi-millionaires it should exercise this right, to prevent too great absorption of wealth by a few.

While we have doubtless troublous times ahead of us, I am still optimistic, and believe the country is in much less danger than it was in 1861, when I was inclined to pessimism. We have a happy way of getting into the tight spots, and then getting out of them. Witness the

greenback and free silver crazes, and the late tendency to short ballots and municipal commission.

But enough of this. Where did you finally go last winter, and where shall you bring up next summer? I escaped my Florida with nothing worse than a slight cold, though I am conscious of the fact that I am a little older, a little thinner, a little weaker, a little clumsier, and a little nearer the outer door than I was a year ago. But I am perfectly contented with my lot. I am hesitating now whether I will accept an invitation to deliver the annual address to the Indiana Bar Association next summer. There are pros and there are cons.

With kind regards to Mrs. Kent, and the hope of hearing from you at your convenience, I am,

Your ancient crony,

H. B. B.

WASHINGTON, D. C.,
May 26, '13.

MY DEAR KENT:

Have just read your article upon dissatisfaction with our judges, which, as you indicate, always has existed, and which I say always will exist so long as there are (1) unfit judges, and (2) litigants to be dissatisfied with decisions against them. There is absolutely no remedy

for it; the public opinion in the end will always stand by an intelligent and incorruptible judiciary.

There is a large class of people in our country who love change for the sake of change, or who think they may profit by it individually. These ideas are a perpetual source of trouble, but, of course, all wrong. There are always a few in the District who are clamouring for a change to a popular government, but the phantom of negro suffrage stands inexorably in their path. No suffrage without nigger — no suffrage, no nigger.

I fancy you are leaning more and more toward short, pithy sentences. Good thing. I always liked them — sometimes use them. The tone is right. It is inconceivable that we can live without a judiciary. Shall it be composed of an educated class, or the mob? But one answer is possible.

Where are you minded to spend the summer? It is not altogether easy to choose. My own health is becoming so uncertain I do not dare to plan. We may choose Watkins again and may remain at home. Main object is not to fall into innocuous desuetude. But, after all, what's a few months more or less? I wrote you quite a long screed about the time you returned from the South, and have little to add. Old age is not so bad, if it only comes in the natural way.

Later, May 28.

Hello! Just as I was finishing your letter up, yours of the 26th has dropped down upon me. We seem to have spent a week or two in Florida dodging each other quite successfully. We were at Sea Breeze, adjoining Daytona, from February 26 to March 12, and drove up to Hotel Ormond to call on Judges Shiras and Reilly the first week in March. We spent a day at Jacksonville, but did not halt at Savannah, which is much finer. You seem to have had plenty to occupy, though not so much to amuse, you.

I certainly envy your ability to walk as you do. My own health has been very bad, and I can do nothing until afternoon. Don't know whether it is "spring depression" aggravated by old age, or old age with a spring depression annex — the last is much the worst. The doctor speaks more encouragingly than I *feel*. He may be right. If so, I may be good for another year.

We intend spending six weeks at Watkins — then, anywhere but Miami is too cold for my old bones.

I rather like Wilson's methods so far as heard from.

I notice you have changed your office, or is it a mere change of name? You must have been Moffat's oldest inhabitant. Well, good-bye,

H. B. B.

Good luck for the summer.

The New Ocean House,
Swampscott, Massachusetts,
July 30, 1913.

My dear Kent:

I received your letter of the 10th a few days before leaving Watkins, and thought I'd postpone a reply till I settled in my next place. I went to Watkins feeling very weak and miserable, but left there after a six weeks' "cure" comparatively quite well, though not strong (never shall be), and weighing only a hundred and fifty-six pounds. You'd believe it if you saw my "shrunk shanks." In fifteen years I have lost fifty pounds, and am fairly entered upon the "lean and slippered pantaloon" age. But, thank God! I haven't lost my spirits, and when I came away a little "circle" of story tellers addressed me a farewell poem. True, it was the purest doggerel, but as an evidence that I was not a bore I quite prize it. Detroit still contributes the largest contingent to Watkins.

Next, here — a pleasant village and an excellent hotel, though guests all strangers. But it is a fire trap, and you may next hear of us — gone up in smoke. Drove over to Nahant yesterday. Alas! Alas! Nahant has lost its glory! No longer the famous resort of fifty years ago, when I ran over from Cambridge to visit it — but down at the heels and out at the elbows and knees.

Plenty of fine houses, but an indescribable something which betokens that fashion has fled to Mount Desert and Cape Ann. It has gone the way of Long Beach and Saratoga.

The Mexican situation is in such a muddle I don't know what to say. While *de facto* governments are entitled to recognition, ought they not to give some evidence of perpetuity, or at least of the general acquiescence of their subjects? Ought we to recognise Huerta, who seems to be on the brink of a precipice? I don't think we ought to throw our influence one way or the other, but let them fight it out. There is but one way in which the Spanish-American people are united. They all hate us — always *have,* and always *will,* and the more we do for them the more bitter their hatred. I dislike the idea of intervention, but we may be driven to it yet.

With kind regards to Mrs. Kent, believe me,

Your loyal friend,

H. B. B.

I fear that Bryan has the *sacra Fames* which has been the undoing of many public men.

THE END

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